BILL OF EXCEPTIONS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 230.

CHARLES E. YATES ET AL., PLAINTIFFS IN ERROR,

vs.

JONES NATIONAL BANK.

No. 231.

CHARLES E. YATES ET AL., PLAINTIFFS IN ERROR,

vs.

UTICA BANK.

No. 232.

CHARLES E. YATES ET AL., PLAINTIFFS IN ERROR,

vs.

THOMAS BAILEY.

No. 233.

CHARLES E. YATES ET AL., PLAINTIFFS IN ERROR,

vs.

BANK OF STAPLEHURST.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

FILED MARCH 20, 1906.

(20,139, 20,140, 20,141, 20,142.)

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1 In the District Court of Seward County, Nebraska.

THE JONES NATIONAL BANK
v.
CHARLES W. MOSHER ET AL.

THE UTICA BANK
v.
CHARLES W. MOSHER ET AL.

THOMAS BAILEY
v.
CHARLES W. MOSHER ET AL.

THE BANK OF STAPLEHURST
v.
CHARLES W. MOSHER ET AL.

Bill of Exceptions.

(Stamped:) Filed Sept. 24" 1902. J. M. Calder, Clerk of District Court.

2-7 Appearances.

For plaintiffs: J. J. Thomas, R. S. Norval, L. C. Burr.
For defendants: J. W. Deweese, C. O. Whedon, H. F. Rose.

Trial had before Hon. S. H. Sornborger, one of the Judges of the District Court of Seward, Nebraska, and a jury May 28th, 1902, being one of the days of the regular May 1902 term of said district court.

This Bill of Exceptions proposed by the defendants.
O. P. HEALD, *Reporter.*

8 *Testimony on Behalf of Plaintiffs.*

AUGUSTUS D. LYNCH, called on behalf of the plaintiffs, and being first duly sworn testified as follows:—

Direct examination.

By Mr. NORVAL:

Q. Where do you reside, Major?
9 A. Washington, D. C.
Q. How long have you resided there?
A. Near seventeen years.
Q. What official position, if any, do you hold in connection with the Comptroller of the Currency, and the Treasurey department of the United State?

A. I am Chief, in the division of "Insolvent National Banks."

Q. And as such officer, are you familiar with the records of that office, and the manner of keeping them?

A. Yes, I am.

Q. You may state if you have with you, in your official capacity, any of the records pertaining to the office of the Comptroller of the Currency.

A. I have.

Q. Will you produce them?

(Witness complying, produces a bundle of papers.)

Q. You may state by what authority, or by whose directions, the documents which you have produced were brought from the department.

10 A. By authority of William B. Ridgeley, Comptroller of the Currency.

Q. And for what purpose and object?

Q. What was the occasion?

Q. When were they brought from Washington, and in whose custody have they been since that time?

A. I left there yesterday a week ago, and they have been in my custody ever since.

Q. And from whom did you receive them, and where did you receive them?

A. By direction of the Comptroller of the Currency I took them from the files of the office.

Q. And brought them here with you?

A. I did.

Q. And kept them in your possession until this time?

A. I have.

Q. And are they a part of the files and records in the office of the Comptroller of the Currency?

A. They are.

The following Exhibits identified.

Nos. 942 to 948 both inclusive. And Nos. 958 to 971 both inclusive.

Nos. 972 to 976 both inclusive.

Q. I now hand you Major Lynch exhibits 942–943 and

11 944 and ask you if they are a part of the files and records of the office of the Comptroller of the Currency at Washington.

A. They are. They were taken in this manner from the files, just as shown here.

Q. And brought by you from there, and have been since in your possession?

A. Yes sir.

Q. I now hand you exhibits 949 to 959 inclusive, and will ask you to state if they are a part of the files and records of the office of the Comptroller of the Currency at Washington, D. C.?

A. Yes they are a part of the files of the Report Division.

Q. And they were brought by you from Washington and have

been in your custody ever since as the custodian of papers for the Treasury department?

A. They have been in my possession.

Q. And are still in your possession as such.—I now hand you papers marked Exhibits No. 960 to 971 inclusive, and will ask you to state if they are a part of the records and files of the office of the Comptroller of the Currency at Washington, D. C.

A. They form a part of the papers, they were in an envelope marked with a private mark.

Q. They are a part of the files, documents and records of the office of the Comptroller of the Currency?

A. Yes sir. (Witness indicates private mark on envelope.)

Q. And they were brought by you from the department of the Comptroller of the Currency to this City last week, and have since been in your possession and under your control, and in your custody?

A. They have.

Q. I now hand you exhibit No. 972, and will ask you if that is a part of the records and files of the office of the Comptroller of the Currency at Washington, D. C.?

A. It is yes sir.

Q. And the same is in your custody as stated in reference
12 to the other papers.

A. Yes sir.

Q. You may state Major Lynch, if you know what has become,—or whether or not the proofs of publication of the statements that were made by the Capital National Bank prior to 1892 are in the Comptroller's office at Washington, or what has become of them.

A. They could not be found, and there is a rule of the office, of the bureau fixed by Col. Tren, when he was Comptroller, that after five years the published statements might be destroyed, on account of the space they took in the vaults, and he issued an order that they might be destroyed, and they are not in the files.

Q. And that has been the custom ever since?

A. Yes sir.

Q. And you have made diligent search through the files and they could not be found?

A. No sir. That is the rule of the office, the Comptrollers regarded it as a departmental rule, but it was made by the Comptroller. There is an affidavit of the File Clerk, specially made, I don't know as it enters into it, but he makes that verification.

By Mr. WHEEDON:

Q. You say you made a search for the papers, or did you rely upon that rule that they were destroyed?

A. No the file clerk make an examination, who is charged with these publications. I also looked in the files.

Q. Did you make search for them?

A. Yes sir.

By Mr. DEWEESE:

Q. I will ask you whether you came here and brought these papers at the request of the plaintiff in this action?

A. The circumstances, as I understand are these. Mr. Jones addressed a letter to the Comptroller of the Currency and requested certain papers to be sent here, or to him, in such manner as was proper, and the Comptroller upon his request sent them, and desig-
nated me as his representative, the representative of the
13 comptroller.

Q. You came here at their expense?

A. I did. The money was paid to the Comptroller. The office pays my expenses. They go into the Comptroller's hands and not mine.

Q. You spoke of Jones, is that Jones of the Jones National Bank?

A. President of the Jones National Bank.

By Mr. NORVAL:

Q. Who sent you here to represent him?

A. The Comptroller of the Currency sent me here to present these papers to the court.

Q. As a representative of what department?

A. I came as the chief of the Insolvent division, and known as the Currency bureau of the Treasury department.

Q. Is that connected with the Comptroller of Currency?

A. The Comptroller is the Chief or head of the Currency bureau.

Q. Of the Treasury department?

A. Of the Treasury department.

Q. And you came as his representative?

A. I did.

Q. Representative of that department?

A. Yes sir.

Mr. NORVAL: That is all.

Witness excused.

* * * * * * *

14 Exhibit No. 942 received and read in evidence, as follows:

"Office Comptroller of Currency, Feb. 27, 1892.

LINCOLN, NEBR., *Feb.* 23, 1892.

E. S. Lacey, Washington, D. C.

DEAR SIR: Your letter of Feb. 15/92 received and considered. The manner of conducting the Capital Nat. Bank of Lincoln,
15 Nebr., for a length of time has not been satisfactory to me.

I have had a talk with C. W. Mosher and R. Outcalt, president and cashier on the subject and they promise that the management of the bank shall be improved. I think I can promise you there will be better management. Your letter is a move in the right direction, it indicates that we the directors should take a more positive position in the management which I for one shall do.

Resp. &c., E. P. HAMER.

Exhibit 334.
Exhibit 942, O. P. H."

Exhibit 943 received and read in evidence, being as follows:

"C. W. Mosher, Prest. #2988. H. J. Walsh, Vice Prest. R. C. Outcalt, Cashier.

Office Comptroller of Currency, Oct. 14, 1892.

Capital National Bank.

Capital $300,000.

16 LINCOLN, NEB., *Sept.* 19, 1892.

To the Comptroller of the Currency, Washington, D. C.

DEAR SIR: In reply to your favor of Aug. 31, 1892 would state that we fully answered you in Feb. last as regards the Mosher & Small loans, & am now making good progress towards cutting those items down to the limit.

As regard the Real Estate mortgages that is a part of the Small matter & both will be cleaned up at the same time. The dividend of July 1st was al-right; The expenses since then have exceeded income by reason of having paid taxes, & interest on certificates of deposits to an unexpected amount during July. The item of $8000.00 losses referred to was an estimate of contingent losses & *an* not any particular loss already incurred, but referred to some matters or process of liquidation, all items mentioned by you shall receive prompt attention.

Yours truly,
(Signed) C. W. MOSHER.
R. C. OUTCALT, *Cashier.*
D. E. THOMPSON.
E. P. HAMER.
A. P. S. STUART.
R. O. PHILLIPS.
C. E. YATES.

Exhibit 335.
Ex. 943. O. P. H."

17 Exhibit No. 944 received and read in evidence as follows:

2988.

Office Comptroller of Currency, Feb. 23, 1892.

LINCOLN, NEB., *Feb. 19th,* 1892.

To the Hon. Comptroller of the Currency.

DEAR SIR: Referring to your letter of 16th to Mr. C. W. Mosher, President, we would say in regard to the item 50950.28 E. W. Mosher, that this am't appears on the books to be a loan to him endorsed by C. W. Mosher and secured collaterally by notes of many

individuals in smaller am'ts aggregating the same am't made to E. W. Mosher.

The facts are that this account is made up with small notes taken in a territory from which comes the best products of the state, and considered a good field for a line of loans & E. W. Mosher was authorized to get good paper of this character for the bank, and such notes being made in the name of E. W. Mosher.

The officers of the bank requiring a guaranty of his discretion took the notes of E. W. Mosher which have been endorsed by C. W. Mosher making the notes of smaller am'ts collateral, thus making fewer a/cs to handle, but unfortunately losing sight of the requirements of Sec. 5200 touching limits of am't which we may simply say ought not to have been done and the matter has now received the attention of the Directors through instructions to place the whole matter in technical as well as financially proper shape as quickly as it may be done without loss.

The J. W. Small 51752.53. This was originally a note given by the Fairfield Exchange Bank of Fairfield, Neb., for $20250.00 at the time secured by collateral notes. In course of time the loan was found to be weak and Prest. Mosher took additional security in shape of second mortgages on real estate, a lot of live stock &c. Mr. Small's bank and his own affairs fell into hard lines and failed in both respects.

The officers of the bank meanwhile had paid off first mortgages in the real estate to the amount of some $31000 to make better the bank security. Other creditors of Small attacked the position of the bank as holding excessive security which resulted in litigation still unsettled, but through which the claims of this bank against some 2700 acres of land has been declared a first lien. And it seems certain that the claim will be fully realized or at farthest only a small loss can follow. The excessive am't of the a/c comes of erroneously charging the am'ts paid for raising liens on the real estate in same a/c instead of a special a/c therefor.

18 In regard to overdrafts. Since the examination this matter has had close attention and has been reduced to 13,537.84 at this date, and should have never been permitted in as much as the records of the bank will show specific instruction to the officers by resolution of the directors not to allow overdrafts.

Over due papers. Instructions have been made to the officers to give both close attention and continuous efforts to correct this condition. It will be remembered, however, that the J. W. Small a/c constitues a part of this amt. which will hold a considerable sum in that condition until pending litigation is concluded.

Discount Committee. The bank has always had a discount committee but about a year since Mr. W. W. Holmes died suddenly & left only one member. The place has now been supplied by the appointment of Mr. E. P. Hamer. The Com. now being A. P. S. Stewart & E. P. Hamer.

Rediscounts. These have been cut down since examination from 137234.16 to 50844.14 and will probably be reduced considerably the coming three months. This condition was not taken on for

the purpose of increased business but to meet falling off in deposits from which all western banks suffered on account of the drouth of 1890.

It is the desire of the directors that the standing of this bank should in all respects be upon perfect footing in the Department and will at all times be pleased to have notification of any apparent neglect.

Yours Resp'y

C. W. MOSHER, *Pt.*
C. E. YATES, *Director.*
R. O. PHILLIPS, *Director.*
D. E. THOMPSON, *Director.*
A. P. S. STUART, *Director.*
E. P. HAMER, *Director.*
R. C. OUTCALT, *Director.*

Exhibit 333.
Exhibit 944 O. P. H."

(Said exhibit being endorsed as follows,—)
File No. — C. No. 2988. From Capital Nat'l Bank, Lincoln, Nebr. Date, Feb'y 19", 1892. Subject—Explaining loans, &c. Answered. Answered by —— Division.

19 Exhibit No. 960 received and read in evidence being as follows:—

"Office of Comptroller of Currency.

Organization.—Form 3.—Ed. 7, 5, '98, 4,500.

Oath of Directors.

STATE OF NEBRASKA, *County of Lancaster, ss:*

We the undersigned Directors of The Capital National Bank of Lincoln in the state of Nebraska being citizens of the United States, and residents of the state of Nebraska do each for himself and not one for the other, solemnly swear that we will severally, so far as the duty devolves on us diligently and honestly administer the affairs of said Association; and that we will not knowingly violate, or willingly permit to be violated, any of the provision- of the Statutes of the United States under which said Association has been organized; and each for himself does solemnly swear that he is the owner in good faith, and in his own right, of the number of shares of stock required by said Statutes, subscribed by him or standing in his name on the books of the said Association; and that the same is not hypothecated, or in any way pledged as security for any loan or debt.

Name.	Residence and Post-office Address.
1. C. W. Mosher	Lincoln, Nebr.
2. R. C. Outcalt	"
3. E. P. Hamer	"
4. R. O. Phillips	"
5. A. P. S. Stuart	"
6. D. E. Thompson	"
7. C. E. Yates	"

On this 8 day of February, A. D. 1892, before me a Notary Public in and for the state and county aforesaid appeared C. W. Mosher, R. C. Outcalt, E. P. Hamer, R. O. Philips, A. P. S. Stuart, D. E. Thompson, and C. E. Yates, who are personally well known to me, and took the foregoing oath and each subscribed the same in my presence.

[SEAL.] HAL. C. LONG,
Notary Public.

NOTE.—Each director when elected must take the oath of office and under section 5147 E. S. R. S., it should be transmitted to the Comptroller of the Currency immediately after the election, etc.

Ex. 960. O. P. H."

20 (Endorsed on back is the following:) "No. 2988. Oath of Directors of The Capital National Bank of Lincoln, Nebraska.
1892.

Exhibit No. 961 received and read in evidence, being as follows:—

"Office Comptroller of Currency.

Organization.—Form 3.—Ed. 7, 5, '98, 4,500.

Oath of Directors.

STATE OF NEB., *County of Lancaster, ss:*

We, the undersigned Directors of "The Capital National Bank" of Lincoln in the State of Nebraska, being citizens of the United States, and residents of the State of Nebr. do each for himself and not one for the other, solemnly swear that we will severally, so far as the duty devolves upon us, diligently and honestly ad-
21–35 minister the affairs of said Association; and that we will not knowingly violate, or willingly permit to be violated, any of the provisions of the Statutes of the United States under which said association has been organized; and each for himself does solemnly swear that he is the owner in good faith, and in his own right, of the number of shares of stock required by said statutes, subscribed by him or standing in his name on the books of the said Association; and that the same is not hypothecated, or in any way pledged as security for any loan or debt.

Name.	Residence and Post-office Address.
1. C. W. Mosher	Lincoln.
2. A. P. S. Stuart	"
3. W. W. Holmes	"
4. D. E. Thompson	"
5. R. O. Phillips	"
6. C. E. Yates	"
7. E. P. Hamer	"

On this 4 day of March A. D. 1891, before me a Notary Public in and for the state and county aforesaid, appeared C. W. Mosher, A. P. S. Stuart, W. W. Holmes, D. E. Thompson, R. O. Phillips, C. E. Yates, and E. P. Hamer, who are personally well known to me, and took the foregoing oath, and each subscribed the same in my presence.

[SEAL.] J. W. MAXWELL,
Notary Public.

NOTE.—Each Director when elected must take the oath of office and under section 5147 U. S. R. S., it should be transmitted to the Comptroller of the Currency immediately after the election. etc.

Ex. No. 961.—O. P. H.

(The following endorsement appears on the back thereof.)
No. 2988 Oath of Directors of The Capital N. B. of Lincoln, Neb. 1891.

* * * * * * *

36 *Oath of Directors.*

STATE OF NEBRASKA, *County of Lancaster, ss:*

We, the undersigned, Directors of The Capital National Bank, of Lincoln, of the State of Nebraska, do each of us solemnly swear that we are citizens of the United States, and residents of the State of Nebraska, and that we will severally, so far as the duty devolves on us, diligently and honestly administer the affairs of said Bank; and that we will not knowingly violate, or willingly permit to be violated, any of the provision of the Revised Statutes of the United States under which this Bank has been organized; and that each of us is the *bona fide* owner, in his own right, of the number of shares of stock subscribed by him or standing in his name on the books of the said Bank, and required by said Revised Statutes; and that the same is not hypothecated, or in any way
37 pledged as security for any loan or debt.

A. P. S. STUART.
D. E. THOMPSON.
C. E. YATES.
E. P. HAMER.
W. W. HOLMES.
R. O. PHILLIPS.
C. W. MOSHER.

Subscribed and sworn to this 26 day of June, 1884, before the undersigned, a Notary Public of said County.

R. C. OUTCALT,
[SEAL.] *Notary Public.*

* * * * * * *

38 Exhibit No. 971 received and read in evidence, as follows,—

* * * * * * *

39 Mr. NORVAL: I now offer in evidence Exhibit No. 972.

* * * * * * *

Exhibit No. 972, received and read in evidence, as follows,—

40–51 Enter Charter number of Bank here.

Bank Officers are requested to use the following form for printer's "copy."

No.—.

Report of the Condition of The Capital National Bank, at Lincoln, in the State of Nebraska, at the Close of Business, 9th Dec. 1892.

Resources.

Loans and Discounts	$768,601.44
Overdrafts, secured and unsecured	6,217.74
U. S. Bonds to secure circulation	50,000.00
U. S. Bonds to secure U. S. Deposits	
Current expenses and taxes paid	14,286.28
Premiums on U. S. Bonds	
Stocks, securities, etc	325.00
Banking house, furniture, and fixtures	5,770.00
Other real estate and mortgages owned	38,617.92
Due from National Banks (not reserve agents)	17,800.33
Due from State Banks and Bankers	5,394.72
Due from approved reserve agents	107,090.01
Internal-Revenue Stamps	
Checks and other cash items	3,698.56
Exchanges for clearing house	8,841.16
Bills of other Banks	2,355.00
Fractional paper currency, nickles, and cents	298.71
Lawful Money Reserve in Bank, viz.:	
Specie	26,789.50
Legal-tender notes	17,431.00
Redemption fund with U. S. Treasurer (5% of circulation)	1,350.00
Due from U. S. Treasurer, other than 5% redemption fund	
Total	1,074,867.37

Liabilities.

Capital stock paid in		300,000.00
Surplus-fund		6,000.00
Undivided profits, less expenses and taxes paid		21,180.75
National Bank notes outstanding		45,000.00
State Bank notes outstanding		
Due to other National Banks	81,574.14	
Due to State Banks and Bankers	47,372.89	643,632.24
Due to Trust Companies and Savings Banks		
Due to approved reserve agents		
Dividends unpaid		
Individual deposits subject to check	356,139.33	
Demand certificates of deposit	158,545.88	
Time certificates of deposit		
Certified checks		
Cashier's checks outstanding		
United States deposits		
Deposits of U. S. disbursing officers		
Notes and bills rediscounted		59,054.38
Bills payable, including certificates of deposits for money borrowed		
Liabilities other than those above stated		
Total		1,074,867.37

STATE OF NEB., *County of Lancaster, ss:*

I, R. C. Outcalt, Cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed and sworn to before me this 15 day of Dec., 1892.

HAL C. YOUNG,
Notary Public.

Correct.
Attest: C. W. MOSHER,
C. E. YATES,
R. O. PHILLIPS,
Directors.

Ex. 972.
O. P. A.
Ex. A. 972.

M. D. CAREY,
Notary Public.

Blank items need not be published.

NOTE.—The banks are respectfully notified that by law their published reports must be copies of the originals; and they must therefore state separately the amount of deposits subject to check, of demand and time certificates of deposit, and of certified checks

and cashier's checks outstanding. Certificates of Deposit representing money borrowed must be included in and published as Bills Payable. Failure to do this may subject a bank to the expense of republication.

Publishers' Certificate.

Enter Charter Number of Bank here.

No. 2988.

Please observe the following requirements:

Cut the printed Report from the Newspaper and attach here.

I. Each National Bank report must be published in a newspaper in the place where the bank is established; or if there be no newspaper in the place, then in the one published nearest thereto in the same county.

II. It must be published in the same form, and the same order of items as in the sample form on the back of this certificate, including the full title and location of bank, the affidavit of cashier, the notary's certificate, and the attestation of at least three directors.

III. Items which remain blank in the original may be omitted from the printed report, but the publication must never be condensed by combining two or more items into one.

IV. The original report should not be delivered on account of publication, but should be forwarded at the earliest moment possible, and the published report can follow at a later date. The form herewith can be used to furnish "copy" for the printer.

(See sections 5211 and 5213, U. S. R. S.)

Paste so that No Part can be Torn Away.

STATE OF NEBRASKA, *County of Lancaster, ss:*

On this 17th day of December, A. D., 1892, personally appeared before the undersigned, a Notary Public within and for said county and State, —— ——, publisher of the Nebraska State Journal, a daily newspaper published at Lincoln, County of Lancaster, State of Neb., who being, duly sworn, states on oath that the Report of "The Capital National Bank" of Lincoln, in the State of Neb., a true copy of which is hereto annexed, was published in said newspaper in its issue of the 17th day of Dec. A. D. 1892.

H. D. HATHAWAY, *Publisher.*

See Sample Form on back of this Certificate.

Subscribed and sworn to before me this 17th day of December, 1892.

W. A. WILLIAMS,
Notary Public.

Forward Certificate to Comptroller of Currency as promptly as possible.

* * * * * * *

52 Exhibit No. 975 received and read in evidence being as follows:

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, *May* 14*th*, 1884.

Whereas, the Congress of the United States by an Act approved May 3, 1884, did authorize "the Marsh National Bank of Lincoln" located in the city of Lincoln, County of Lancaster and State of Nebraska, to change its name to "The Capital National Bank of Lincoln," whenever the board of directors of The Marsh National Bank of Lincoln, shall accept the new name by resolution, of the said Board, and cause a copy of said resolution, duly authenticated, to be filed with the Comptroller of the Currency.

And whereas, the board of directors of "the Marsh National Bank of Lincoln," at a meeting called for the purpose on May 6, 1884, did vote to accept the change of name to "The Capital National Bank of Lincoln."

And whereas, the President, in accordance with section 1 of said act has executed a certificate under the corporate seal of the bank specifying the action taken by the directors of said bank as above, and their determination as to such change of name, and has caused the same to be recorded in the office of the Comptroller of the Currency.

Now therefore, I, Henry W. Cannon, Comptroller of the
53 Currency do hereby declare that by virtue of said act the name of "The Marsh National Bank of Lincoln," is changed to "The Capital National Bank of Lincoln."

In testimony whereof, I have here subscribed my name and caused my seal of office to be affixed to these presents at the City of Washington, in the District of Columbia this 14th day of May A. D. 1884.

[Seal of the Comptroller of the Currency.]

H. W. CANNON,
Comptroller of the Currency.

Certificate for Certified Copy.

TREASURY DEPARTMENT,
Office of the Comptroller of the Currency, ss:

Under the provisions of Section 884 of the Revised Statutes of the United States I, Lawrence O. Murray, Deputy and Acting Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original certificate of the Comptroller of the Currency, under date of May 14, 1884 approving change in name of the Marsh National Bank of Lincoln, Nebraska, to The Capital National Bank of Lincoln, and of the whole of such original on file and of record in my office.

In Testimony Whereof, I have hereunto subscribed my name, and caused my seal of office to be affixed to these presents, at the Treasury Department in the City of Washington and District of Columbia, this twenty fifth day of February A. D. 1899.

[Seal of Comptroller of Currency.]

LAWRENCE O. MURRAY,
Deputy and Acting Comptroller of the Currency.

Ex. 975, P. 2.

* * * * * * *

54 "TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, D. C., *May 14th*, 1902.

WASHINGTON, *District of Columbia, ss:*

On this fourteenth day of May 1902 personally appeared before the undersigned a Notary Public within and for said District of Columbia, George H. Wood, who being duly sworn states on oath that he is now and has been since the year 1882 File Clerk for the Office of Comptroller of the Currency, Treasury Department, and that all of the "Publishers' Certificates" of publication of National Bank "Reports of Condition" prior to the year 1895 have been destroyed by order of the Comptroller of the Currency because of their large accumulation and inadequate file room of the Department, and their duplication being found in the newspaper files of the country, and further states that said "Publishers' Certificates" of the Capital National Bank of Lincoln, Nebraska, were checked off a list of National Banks as being among those destroyed.

GEORGE W. WOOD.

Subscribed and sworn to this fourteenth day of May, 1902.

EBENEZER SOUTHALL,
Notary Public.

[NOTARY SEAL.]

Ex. 976, P. 1.

55 WASHINGTON, D. C., *May 14th*, 1902.

This is to certify that George H. Wood whose signature appears above is now File Clerk in the Office of the Comptroller of the Currency, and has acted in that capacity since the year 1882.

In Witness Whereof, I have hereto subscribed my name, and caused my seal of office to be affixed to these presents at the City of Washington, in the District of Columbia, this fourteenth day of May A. D. 1902.

[SEAL.]

F. P. KANE,
Deputy & Acting Comptroller of the Currency.

Ex. 976, P. 2.

* * * * * * *

56 Exhibit No. 945 received and read in evidence, being as follows:—

S. 2988.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, D. C. *Sept.* 8, 1891.

M. L. C.
E. A. D.

Mr. C. W. Mosher, President Capital National Bank, Lincoln, Neb.

SIR: The report of an examination of your bank, made on the 19th ultimo, has been received.

The following loans appear to exceed the limit prescribed by Section 5200 U. S. R. S.:

E. W. Mosher	$46,355.98
G. W. Small	56,478.20

It appears from the report that your bank holds real estate mortgages to secure the latter loan, which were acquired May 30, 1886.

Your attention is respectfully called to Section 5137 U. S. R. S. which provides that

"No such association shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years."

The examiner reports that when your last report of condition was made to this office, you had overdrafts amounting to $55,004.47 as shown by your books, while you only reported $12,418.97, and classed the remainder as loans and discounts.

You are respectfully informed that your reports and published statements should show the full amount of this item as it appears on the books of your bank.

The practice of allowing overdrafts should be avoided so far as practicable. Demand notes should be taken in all cases for temporary loans.

Overdue paper is reported amounting to $106,760.25 of which $14,000.00 is classed as "bad debts" as defined by Section 5204 U. S. R. S. Such of the overdue paper as is good should be collected or made active by renewal, with satisfactory security for payment after a reasonable extension. The "bad debts" unless satisfactorily arranged in the meantime, should be charged off prior to declaring a dividend.

Your premium account should be charged off, as the 4½% U. S. bonds have no premium value in the market.

The examiner reports that you expect to sustain a loss of $2,000.00. upon the note of Donnell, Lawson and Simpson and $2,500.00. upon your suspended and overdue paper, which together with the $14,000.00 "bad debts" you intend to charge off before declaring a dividend.

Ex. 945 P. 1.

57 It is noted that your current expenses exceed your undivided profits by $4,830.87.

It appears from the report that your bank has a large liability on account of notes and bills rediscounted, which the examiner states has been occasioned by the falling off in your deposits. It is respectfully suggested that some of your loans be called in as soon as practicable.

The examiner reports that your board of directors has held only two meetings during the past year, and there is no record of their having examined or approved of the loans and discounts.

It is respectfully suggested that the conduct of the affairs of a national bank is by law devolved upon the board of directors, and regular and frequent meetings are therefore very desirable.

Respectfully yours,

R. M. NIXON,
Deputy and Acting Comptroller.

Certificate for Certified Copy.

TREASURY DEPARTMENT,
Office of the Comptroller of the Currency, ss:

Under the provisions of Section 884 of the Revised Statutes of the United States, I, William B. Ridgely Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original letter of R. M. Nixon, Deputy and Acting Comptroller of the Currency September 8, 1891, to C. W. Mosher, President of "The Capital National Bank of Lincoln," Nebraska, and of the whole of such original on file and of record in my office.

In testimony whereof, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department, in the City of Washington, and District of Columbia, this twenty ninth day of January A. D. 1902.

[Seal of the Comptroller of Currency.]

WM. B. RIDGELY,
Comptroller of the Currency.

Ex. 945 P. 2.

58 Exhibit No. 946 received and read in evidence, being as follows,—

59 L. 2988.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, D. C., *Jan.* 30, 1892.

C. S. H.

Mr. R. C. Outcalt, Cashier Capital Nat. Bank, Lincoln, Nebr.

SIR: The report of condition of your bank on Dec. 2, 1891, is received, in which no entries appear in the following schedules or

the back of the report; Bad debts, as defined in Sec. 5204, in Loans and Discounts.

Please inform me by return mail what amounts, if any, should be entered in these schedules.

You are respectfully requested in future to fill out all schedules on the back of the report, writing in the word "none" where there are no items to be entered.

A careful compliance with this request will save correspondence.

Respectfully yours,

R. M. NIXON,
Deputy Comptroller.

Certificate for Certified Copy.

TREASURY DEPARTMENT,
Office of the Comptroller of the Currency, ss:

Under the provisions of Section 884 of the Revised Statutes of the United States, I William B. Ridgely Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original letter of R. M. Nixon, Deputy Comptroller of the Currency, January 30, 1892, to R. C. Outcalt Cashier of "The Capital National Bank of Lincoln," Nebraska, and of the whole of such original on file and of record in my office.

In testimony whereof, I have hereunto subscribed my name, and caused my seal of office to be affixed to these presents, at the Treasury Department, in the city of Washington and District of Columbia, this twenty-ninth day of January A. D. 1902.

[Seal of the Comptroller of Currency.]

WM. B. RIDGELY,
Comptroller of the Currency.

Ex. 946.

60 Exhibit No. 947 received and read in evidence, being as follows;—

61 L. 2988.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY.

H.

Mr. C. W. Mosher, President Capital Nat. Bank, Lincoln, Neb.

SIR: In the report of condition of your bank on Dec. 2, 1891, there is included in the schedule of loans and discounts $14,000. bad debts as defined by Section 5204 of the Revised statutes.

You are respectfully requested to advise me of the present condition of this paper.

Respectfully yours,

R. M. NIXON,
Deputy Comptroller.

Certificate for Certified Copy.

TREASURY DEPARTMENT,
Office of the Comptroller of the Currency, ss:

Under the provisions of Section 884 of the Revised Statutes of the United States, I William B. Ridgely Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original letter of R. M. Nixon, Deputy Comptroller of the Currency, February 5, 1892 to C. W. Mosher President of "The Capital National Bank of Lincoln" Nebraska, and of the whole of such original on file and of record in my office.

In testimony whereof, I have hereunto subscribed my name, and caused my seal of office to be affixed to these presents at the Treasury Department, in the City of Washington, and District of Columbia this Twenty-ninth day of January A. D. 1902.

[Seal of the Comptroller of Currency.]

WM. B. RIDGELY,
Comptroller of the Currency.

Ex. 947.

62 Exhibit No. 948 received and read in evidence, being as follows;—

63

S. 2988.

M. L. C.
E. A. D.
G. M. C.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, D. C., *Feb.* 16, 1892.

Mr. C. W. Mosher, President Capital Nat'l Bank, Lincoln, Neb.

SIR: The report of an examination of your bank, made on the 26th ultimo, has been received.

The following loans appear to exceed the limit prescribed by Section 5200 U. S. R. S.

E. W. Mosher	$50,950.28
G. W. Small	51,752.53

The examiner reports that you have some loans that have been carried along for a number of years, which he thinks should be collected as soon as practicable, and includes the above excessive loans in this class. He also thinks that Mr. Mosher's liability as an endorser is too large.

The agreement of Messrs. R. C. Outcalt and C. W. Mosher to reduce their liabilities, and in future adjust all accounts so that over drafts will be confined to those of a temporary nature, and also that they will close the bulk of their outside interests, and give their attention to the affairs of the bank, is received.

The examiner states that owing to these outside dealings the business of the bank has suffered.

Overdrafts are reported amounting to $60,936.78. Please inform me to what extent these have been reduced since the examination. The practice of allowing overdrafts should be avoided so far as practicable.

Overdue paper is reported amounting to $104,868.19 of which $14,500 is classed as "bad debts" as defined by Section 5204 U. S. R. S. Such of this overdue paper as is good should be collected or made active by renewal, with satisfactory security for payment after a reasonable extension.

The examiner reports that losses aggregating $30,000. including the amount of "bad debts" reported above, were charged off during the examination.

The examiner reports that your by-laws require the board of directors to meet only twice a year, and that they often only go through the form of declaring a dividend, and do not examine the loans and discounts. He states that you have no discount nor examining committee.

It is respectfully suggested that the conduct of the affairs of a national bank is by law devolved upon the board of directors, and regular and frequent meetings are therefore very desirable.

It appears from the report that your bank was borrowing $137,234.16 on notes and bills rediscounted, and that it has been borrowing money continuously during the past year.

The examiner states that the amount of your borrowings have been largely reduced since his previous examination, and it is suggested that all this liability be paid off, and that the implied power to borrow money should be reserved for emergencies, and not habitually used for the purpose of procuring banking capital.

Ex. 948 P. 1.

64–67 The necessity for borrowing appears to have arisen from the excessive loans made, and your first effort should therefore be to realize on these by reducing them to the lawful limit. Special effort should also be made to collect or renew your overdue paper.

Please bring this communication to the attention of your board of directors for consideration, and for reply over their individual signatures.

C. Ex. 944.

E. S. LACEY,
Comptroller.

Certificates for Certified Copy.

TREASURY DEPARTMENT,
Office of the Comptroller of the Currency, ss:

Under the provisions of Section 884 of the Revised Statutes of the United States, I William B. Ridgely Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original letter of E. S. Lacey, Comptroller of the Currency, February 16, 1892 to C. W. Mosher President of

"The Capital National Bank of Lincoln," Nebraska, and the whole of such original on file and of record in my office.

In testimony whereof, I have hereunto subscribed my name, and caused my seal of office to be affixed to these presents at the Treasury Department, in the city of Washington and District of Columbia, this twenty-ninth day of January A. D. 1902.

[Seal of the Comptroller of Currency.]

WM. B. RIDGELY,
Comptroller of the Currency.

Ex. 948 P. 2.

68 Notice published in the State Journal under date of Jan. 9th, 1887, received and read in evidence, being as follows:

Ex. 977. O. P. H. 5/29/1902.

Report of the Condition of the Capital National Bank at Lincoln, in the State of Nebraska, at the Close of Business, December 28, 1886.

Resources.

Loans and discounts	$737426.12
Overdrafts	3974.33
U. S. Bonds to secure circulation	50000.00
Other stock- bond- and mortgages	22739.34
Due from approved and reserve Agents	74068.63
Due from other National Banks	56215.29
Due from State Banks and Bankers	10495.36
Real Estate Furniture and fixtures	7177.33
Current expenses and taxes paid	8885.65
Premiums paid	7188.43
Checks and other cash items	13742.02
Bills of other Banks	3712.00
Fractional paper currency, nickels and cents	216.42
Specie	27308.00
Legal Tender Notes	10400.00
Redemption with U. S. Treasurer, (5% circulation)	1900.00
Total	$1035448.92

69–72 Liabilities.

Capital Stock paid in		$300000.00
Surplus funds		12000.00
Undivided profits		28439.38
National Bank notes outstanding		45000.00
Individual deposits subject to checks	$414962.35	
Demand certificates of deposit	40859.66	
	455822.01	

Due to other National Banks.....	107648.27	
Due to State Banks and Bankers...	34448.66	
		597918.94
Notes and bills rediscounted.....		52090.60
Total		$1035448.92

STATE OF NEBRASKA, *Lancaster County, ss:*

I, C. W. Mosher, president of the above Bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

C. W. MOSHER, *President.*

Subscribed in my presence and sworn to before me this 11th day of October 1886.

E. R. SMITH, *N. P.*

Correct.
Attest:

C. W. MOSHER,
C. E. YATES,
D. E. THOMPSON,
Directors.

J. W. D.

* * * * * * *

73 & 74 Ex. 978. O. P. H. 5/29/1902.

(Daily Nebraska State Journal, Lincoln, Saturday, August 6th, 1887.)

Report of the Condition of the Capital National Bank at Lincoln, in the State of Nebraska, at the Close of Business, August 1st, 1887.

Resources.

Loans and discounts.....	$908623.31
Overdrafts	6231.69
U. S. Bonds to secure circulation.....	50000.00
Other Stocks, Bonds, Mortgages.....	15281.00
Due from approved reserve agents.....	75189.86
Due from other National Banks.....	42048.82
Due from State Banks and Bankers.....	5624.17
Real Estate Furniture and fixtures.....	5650.00
Current expenses paid and taxes paid.....	2192.88
Premiums paid	6200.00
Checks and other cash items.....	45349.70
Bills of other Banks.....	1570.00
Fractional Currency, nickels and cents.....	91.28
Specie	34975.50
Legal tender notes.....	16108.00
Redemption fund with U. S. Treasurer (5% of circulation)	2250.00
Total	$1217386.21

Liabilities.

Capital Stock paid in		$300000.00
Surplus fund		16000.00
Undivided profits		3447.66
National Bank notes outstanding		45000.00
Individual deposits subject to checks	$454253.97	
Demand certificates of deposit	119864.68	
Due to other National Banks	201760.43	
Due to State Bank- and Bankers	77059.47	
		$852938.55
Total		$1217386.21

STATE OF NEBRASKA, *Lancaster County, ss:*

I, R. C. Outcalt, Cashier of the above named bank do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed in my presence and sworn to before me this 5th day of August, 1887.

[SEAL.] J. W. MAXWELL, *N. P.*

MANUELL.

Correct.
Attest:

W. W. HOLMES,
D. E. THOMPSON,
C. W. MOSHER,
Directors.

J. W. D.

* * * * * * *

75 Ex. 979. O. P. H. 5/29/1902.

(Daily Nebraska State Journal, Lincoln, Tuesday, October 11th, 1887.)

Report of the Condition of the Capital National Bank at Lincoln, in the State of Nebraska, at the Close of Business, October 5, 1887.

Resources.

Loans and discounts	$832190.33
Overdrafts	2590.53
U. S. Bonds to secure circulation	50000.00
Other Stocks bonds and mortgages	16129.56
Due from approved Reserve Agents	74162.21
Due from other National Banks	36377.13
Due from State Banks and Bankers	14543.96
Real estate furniture and fixtures	7100.00
Current expenses and taxes paid	5753.47

Premiums paid		5500.00
Checks and other Cash items		57217.35
Bills of other Banks		635.00
Fractional paper currency, nickels and cents		87.70
Specie		37855.50
Legal tender notes		8823.00
Redemption funds with U. S. Treasurer, (5 % of circulation)		2250.00
Total		$1151214.74

Liabilities.

Capital stock paid in		$300000.00
Surplus fund		16000.00
Undivided profits		9862.78
National bank notes outstanding		45000.00
Individual deposits subject to check	$430220.61	
Demand certificates of deposit	119453.43	
Cashier's checks outstanding	4159.04	
Due to other National Banks	145106.92	
Due to State Banks and Bankers	57411.96	
		756351.96
Notes and bills rediscounted		24000.00
Total		$1151214.74

STATE OF NEBRASKA, *Lancaster County, ss:*

I, R. C. Outcalt, Cashier of the above named bank, do solemnly swear that the above named statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed in my presence and sworn to before me this 10th day of October, 1887.

E. R. SMITH,
Notary Public.

Correct.
Attest:

C. W. MOSHER,
W. W. HOLMES,
A. P. S. STUART,
Directors.

J. W. D.

* * * * * * *

76 Mr. NORVAL: I now offer in evidence No. 980 being the report inquired of.

Exhibit No. 980 received and read in evidence as follows:

Report of the Condition of the Capital National Bank, at Lincoln, in the State of Nebraska, at the Close of Business December 9th, 1892.

Resources.

Loans and discounts		$768601.44
Overdrafts secured and unsecured		6217.74
United States Bonds to secure circulation		50000.00
Stocks securities and etc		325.00
Due from approved Reserve Agents		107090.01
Due from other National Banks		17800.33
Due from State Banks and Bankers		5394.72
Banking house furniture and fixtures		5770.00
Other real estate and mortgages owned		38617.92
Current expenses and taxes paid		14286.28
Checks and other Cash items		3698.56
Exchanges for clearing house		8841.16
Bills of other Banks		2355.00
Fractional paper currency, nickels and cents		298.71
Specie		26789.50
Legal tender notes		17431.00
Redemption fund with U. S. Treasurer (5% of circulation)		1350.00
Total		$1074867.37

Liabilities.

Capital Stock paid in		$300000.00
Surplus fund		6000.00
Undivided profits		21180.75
National Bank notes outstanding		45000.00
Individual deposits subject to check	$356139.33	
Demand certificates of deposit	158545.88	
Due to other National Banks	81574.14	
Due to State Banks and Bankers	47372.89	
		643632.24
Notes and bills rediscounted		59054.38
		$1074867.37

STATE OF NEBRASKA, *County of Lancaster, ss:*

I, R. C. Outcalt, Cashier of the above named Bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed and sworn to before me this 15th day of December 1892.

HAL. C. YOUNG,
Notary Public.

Correct.
Attest:

C. W. MOSHER,
C. E. YATES,
R. O. PHILLIPS,
Directors.

J. W. D.

* * * * * * *

79 & 80 "Capital National Bank, Lincoln, Nebraska.

Capital, $300,000.00.

C. W. Mosher, President. H. J. Walsh, Vice P't.

R. C. Outcalt, Cashier.

Directors:
W. W. Holmes,
D. E. Thompson,
C. W. Mosher,
R. C. Phillips,
E. P. Hamer,
C. E. Yates.
A. P. S. Stuart.

Acc'ts solicited, Banks, Bankers and Merchants."

* * * * * * *

81–83 Ex. 982. O. P. H. 5, 28, 1902.

(Lincoln Daily Call, Lincoln, December 18th, 1888.)

Report of the Condition of the Capital National Bank, at Lincoln, in the State of Nebraska, at the Close of Business, Dec. 12th, 1888.

Resources.

Loans and discounts	$860944.18
Overdrafts secured and unsecured	11529.18
U. S. Bonds to secure circulation	50000.00
Other stocks, bonds and mortgages	9148.88
Due from approved reserve agents	83964.65
Due from other National Banks	38539.83
Due from State Banks and Bankers	10259.39
Real estate furniture and fixtures	28258.03
Premiums paid	4000.00
Current expenses and taxes paid	21112.31
Checks and other cash items	19495.08
Bills of other Banks	2830.00
Fractional paper currency, nickels and cents	244.39
Specie	20785.50

Legal tender notes	22400.00
Redemption fund with U. S. Treasurer, (5% of circulation)	1730.00
Total	$1185238.42

Liabilities.

Capital stock paid in		$300000.00
Surplus fund		20000.00
Undivided profits		37614.80
National Bank notes outstanding (515198.19)*		45000.00
Individual deposits subject to check	$397275.24	
Demand certificates of deposit	117922.95	
Cashier's checks	4892.06	
Due to other National Banks	63392.84	
Due to State Banks and Bankers	87960.05	
		671443.19
Notes and Bills Rediscounted		111180.43
		$1185238.42

STATE OF NEBRASKA, *County of Lancaster, ss:*

I, R. C. Outcalt, Cashier of the above named Bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed and sworn to before me this 15th day of December, 1888.

J. W. MAXWELL,
Notary Public.

Correct.
Attest:

C. W. MOSHER,
C. E. YATES,
W. W. HOLMES,
Directors.

J. W. D.

* * * * * * *

[* In pencil in copy.]

84 & 85 Ex. 983. 5, 29, 1902. O. H. P.

(The Lincoln Daily Call.)

Eleventh Year, Lincoln, Nebraska, Saturday Evening, October 4, 1889.

No. 95, Page 4.

Report of the Condition of the Capital National Bank, at Lincoln, in the State of Nebraska, at the Close of Business, September 30th, 1889.

Resources.

Loans and discounts		$800159.88
Overdrafts secured and unsecured		6372.45
U. S. Bonds to secure circulation		50000.00
Other Stocks, bonds and mortgages		21954.94
Due from approved reserve agents		76238.34
Due from other National Banks		42329.97
Due from State Banks and Bankers		5390.35
Real estate furniture and fixtures		43741.70
Current expenses and taxes paid		7935.58
Premiums paid		3750.00
Checks and other cash items		3964.67
Exchanges for clearing house		12844.22
Bills of other Banks		2240.00
Fractional paper currency, nickels and cents		643.06
Specie		33029.75
Legal tender notes		12333.00
Redemption fund with U. S. Treasurer (5% of circulation)		1500.00
Total		$1124432.09

Liabilities.

Capital stock paid in		$300000.00
Surplus fund		24000.00
Undivided profits		14211.73
National Bank notes outstanding (489613.96)*		45000.00
Individual deposits subject to check	$324391.90	
Demand certificates of deposit	165222.06	
Cashier's checks outstanding	12597.50	
Due to other National Banks	84604.80	
Due to State Banks and Bankers	92722.00	
		$679538.26
Notes and bills rediscounted		61682.92
Total		$1124432.91

[* In pencil in copy.]

STATE OF NEBRASKA, *Lancaster County, ss:*

I, R. C. Outcalt of the above named Bank. do solemnly swear that the above named statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed in my presence and sworn to before me this 4th day of October 1889.

J. W. MAXWELL,
Notary Public.

Correct.
Attest:

C. W. MOSHER,
C. E YATES,
W. W. HOLMES,
Directors.

J. W. D.

* * * * * * *

86 & 87 Ex. 984. 5, 29, 1902. O. P. H.

(Lincoln Daily Call, Lincoln, December 16th, 1889.)

Report of the Condition of the Capital National Bank, at Lincoln, in the State of Nebraska, at the Close of Business December 11th, 1889.

Resources.

Loans and discounts	$808781.26
Overdrafts secured and unsecured	10977.12
U. S. Bonds to secure circulation	50000.00
Stocks securities *and* etc	41954.94
Due from approved reserve agents	52103.47
Due from other National Banks	22423.53
Due from State Banks and Bankers	18564.82
Banking house furniture and fixtures	5770.00
Other real estate and mortgages owned	41505.47
Current expenses and taxes paid	10948.24
Premium on U. S. Bonds	3750.00
Checks and other cash items	8330.76
Exchanges for clearing house	5102.38
Bills of other Banks	2670.00
Fractional paper currency, nickels and cents	153.02
Specie	27623.70
Legal tender notes	13499.00
Redemption fund with U. S. Treasurer, (5% of circulation)	1709.41
Total	$1125921.12

Liabilities.

Capital Stock paid in		$300000.00
Surplus fund		24000.00
Undivided profits		24126.30
National Bank notes outstanding		45000.00
Individual deposits subject to check	$301390.77	
Demand certificates of deposit	157159.04	
Cashier's checks outstanding	2695.20	
Due to other National Banks	51283.67	
Due to State Banks and Bankers	70087.40	
		582616.08
Notes and Bills Rediscounted		150184.74
Total		$1125927.12

STATE OF NEBRASKA, *County of Lancaster, ss:*

I, R. C. Outcalt, Cashier of the above named Bank, do solemnly — that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed and sworn to before me this 11 day of December 1889.
J. W. MAXWELL, *N. P.*

Correct.
Attest:

C. W. MOSHER,
A. P. STUART,
W. W. HOLMES,
Directors.

J. W. D.

* * * * * * *

88-90 Ex. 985. 5, 29, 1902. O. P. H.

(The Lincoln Daily Call, Friday Evening, December 26, 1890, Page 5.)

Report of the Condition of the Capital National Bank, at Lincoln, in the State of Nebraska, at the Close of Business, December 19th 1890.

Resources.

Loans and discounts	$847442.40
Overdrafts secured and unsecured	9330.20
U. S. Bonds to secure circulation	50000.00
Stocks, securities, claims & etc.	16909.88
Due from approved reserve agents	116166.95
Due from other National Banks	26033.84
Due from State Banks and Bankers	2996.22

Banking house furniture and fixtures	5770.00
Other real estate and mortgages owned	55099.59
Current expenses and taxes paid	16304.98
Premiums on U. S. Bonds	2400.00
Checks and other cash items	2222.50
Exchanges for clearing house	15235.52
Bills of other Banks	3535.00
Fractional paper currency, nickels & cents	188.30
Specie	59640.50
Legal tender notes	2505.00
Redemption fund with U. S. Treasurer (5% of circulation	2250.00
Total	$1234030.88

Liabilities.

Capital stock paid in		$300000.00
Surplus fund		28000.00
Undivided profits		33585.80
National Bank notes outstanding		45000.00
Individual deposits subject to check	$364123.01	
Demand certificates of deposit	270168.96	
Cashiers' checks outstanding	7298.89	
Due to other National Banks	42280.26	
Due to State Banks and Bankers	46924.39	
		730795.51
Notes and Bills Rediscounted		96649.57
		$1234030.88

STATE OF NEBRASKA, *Lancaster County, ss:*

I, R. C. Outcalt Cashier of the above named Bank do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed in my presence and sworn to before me this 26th day of December, 1890.

J. W. MAXWELL,
Notary Public.

Correct.
Attest:

C. W. MOSHER,
D. E. THOMPSON,
W. W. HOLMES,
Directors.

J. W. D.

91 & 92 Ex. 986. 5/29/1902. O. P. H.

(The Lincoln Daily Call, Saturday Evening, July 18, 1891, Page 4.)

Report of the Condition of the Capital National Bank, at Lincoln, in the State of Nebraska, at the Close of Business, July 9th, 1891.

Resources.

Loans and discounts		$898011.57
Overdrafts secured and unsecured		12834.98
U. S. Bonds to secure circulation		50000.00
Stocks, securities, claims and etc		2913.49
Due from approved Reserve agents		51984.76
Due from other National Banks		23946.91
Due from State Banks and Bankers		2880.04
Banking house furniture and fixtures		5770.00
Current expenses and taxes paid		3815.30
Premiums on U. S. Bonds		1437.50
Checks and other Cash items		5662.26
Exchanges for clearing house		4544.50
Bills of other Banks		11145.00
Fractional paper currency, nickels and cents		251.70
Specie		31350.00
Legal tender notes		14445.00
Redemption fund with U. S. Treasurer, (5% of circulation)		600.00
Total		$1121593.01

Liabilities.

Capital Stock paid in		$300000.00
Surplus fund		30000.00
Undivided profits		17304.87
National Bank notes outstanding		45000.00
Individual deposits subject to check	$367258.70	
Demand certificates of deposit	139199.07	
Cashier's checks outstanding	3229.16	
Due to other National Banks	54426.22	
Due to State Banks and Bankers	47883.89	
		611897.04
Notes and Bills Rediscounted		117391.10
		$1121593.01

STATE OF NEBRASKA, *Lancaster County, ss:*

I, R. C. Outcalt, Cashier of the above named Bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed in my presence and sworn to before me this 18th day of July 1891.

HAL. C. YOUNG,
Notary Public.

Correct.
Attest:

C. W. MOSHER,
D. E. THOMPSON,
C. E. YATES,
Directors.

J. W. D.

* * * * * * *

93-95 Ex. 987. O. P. H. 5/29/1902.

(The Lincoln Daily Call, Thursday Evening, October 1, 1891, Page 5.)

Report of the Condition of the Capital National Bank, at Lincoln, in the State of Nebraska, at the Close of Business, September 25th, 1891.

Resources.

Loans and discounts		$834139.46
Overdrafts, secured and unsecured		4250.65
U. S. Bonds to secure circulation		50000.00
Stocks, securities, claims and etc		53063.49
Due from approved reserve agents		52788.80
Due from other National Banks		15670.94
Due from State Banks and Bankers		9521.76
Banking house furniture and fixtures		5770.00
Current expenses and taxes paid		7547.15
Checks and other Cash items		7060.81
Exchanges for clearing house		5873.65
Bills of other Banks		630.00
Fractional paper currency, nickels and cents		249.50
Specie		26653.50
Legal tender notes		18984.00
Redemption fund with U. S. Treasurer (5% of circulation)		2250.00
Total		$1094453.71

Liabilities.

Capital stock paid in		$300000.00
Surplus fund		32000.00
Undivided profits		14785.57
National Bank notes outstanding		45000.00
Individual deposits subject to checks	$276860.66	
Demand certificates of deposit	227416.81	

Cashier's checks outstanding.....	3914.82	
Due to other National Banks.....	40262.69	
Due to State Banks and Bankers.....	55641.64	
		604096.62
Notes and Bills rediscounted.....		98571.52
		$1094453.71

STATE OF NEBRASKA, *Lancaster County, ss:*

I, R. C. Outcalt, Cashier of the above named Bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed in my presence and sworn to before me this 1st day of October, 1891.

HAL. C. YOUNG,
Notary Public.

Correct.
Attest:

C. W. MOSHER,
A. P. S. STUART,
E. P. HAMER,
Directors.

J. W. D.

96-101 Ex. 988. 5/29/1902. O. P. H.

(The Lincoln Daily Call, Lincoln, December 14th, 1891.)

Report of the Condition of the Capital National Bank, at Lincoln, in the State of Nebraska, at the Close of Business, December 2nd, 1891.

Resources.

Loans and discounts.....	$870255.72
Overdrafts secured and unsecured.....	3164.20
U. S. Bonds to secure circulation.....	50000.00
Stocks securities and etc.....	53513.49
Due from approved reserve agents.....	52681.04
Due from other National Banks.....	11701.37
Due from State Banks and Bankers.....	7415.11
Banking house furniture and fixtures.....	5770.00
Other real estate and mortgages owned.....	
Current expenses and taxes paid.....	12881.93
Checks and other cash items.....	8595.13
Exchanges for clearing house.....	8310.79
Bills of other Banks.....	1215.00
Fractional paper currency, nickels and cents.....	241.60
Specie	46011.50

Legal tender notes	9940.00
Redemption fund with U. S. Treasurer (5% of circulation)	2250.00
Total	$1143946.88

Liabilities.

Capital stock paid in		$300000.00
Surplus fund		32000.00
Undivided profits		23276.89
National Bank notes outstanding		45000.00
Individual deposits subject to check	$271018.85	
Demand certificates of deposit	207710.11	
Due to other National Banks	62312.57	
Due to State Banks and Bankers	77432.32	
		618473.85
Notes and Bills Rediscounted		125196.14
		$1143946.88

STATE OF NEBRASKA, *County of Lancaster, ss:*

I, R. C. Outcalt, Cashier of the above named Bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed and sworn to before me this 14th day of December, 1891.

HAL. C. YOUNG,
Notary Public.

Correct.
Attest:

C. W. MOSHER,
C. E. YATES,
A. P. S. STUART,
Directors.

J. W. D.

102 Mr. H. T. JONES, called as a witness on behalf of the Plaintiffs, and being first duly sworn, testified as follows:

Direct examination.

By Mr. J. J. THOMAS:

Q. You may state your name.
A. H. T. Jones.
Q. You reside here in Seward?
A. Yes sir.
Q. For how many years?
A. Since July 1873.

Q. What is your occupation?
A. The banking business.
Q. How long have you been engaged in the banking business?
A. Since 1884.
Q. I hand you exhibit No. 960 and ask you to examine it, and state if you are acquainted with the signatures appearing on that exhibit.
A. I am yes sir.
Q. I will ask you to state if you know, if the signatures of C. W. Mosher, R. C. Outcault, E. P. Hamer, R. O. Phillips, A. P. S. Stuart, D. E. Thompson, and C. E. Yates is their genuine signatures?
A. They are.
Q. Handing you exhibit No. 961, I will ask you to state if you know if the signatures of C. W. Mosher, A. P. S. Stewart, W. W. Holmes, D. E. Thompson, R. O. Phillips, C. E. Yates, and E. P. Hamer are their genuine signatures.

Mr. DEWEESE: I wish to interrogate the witness.
COURT: You may proceed.

By Mr. WHEDON:

Q. What makes you think you are acquainted with E. P. Hamer's signature? Where did you ever see it?
A. I have seen it in the records and files of the Capital National Bank.
103 Q. You have seen the name "E. P. Hamer" written there in some books, that is you found it already written there.
A. No among some of the files and papers I saw his original signature.
Q. How do you know that that was his signature?
A. The same as I learn to know the signature of any other man.
Q. Suppose you saw my name written in a book there would you necessarily conclude that I had written it there?
A. No sir.
Q. How do you know that he wrote his name there?
A. I am familiar with it, doing business with that bank from 1884 up to January 1893, I saw the signatures of the officers of that bank frequently.
Q. But how do you know that they were the signatures of the officers of that bank, did you ever see any of them write their name?
A. Yes, a great many of them.
Q. Did you ever see Hamer write his name?
A. No sir.
Q. And you never got a letter personally from him?
A. No sir.
Q. You wouldn't know any more than any other person when you saw E. P. Hamer, the name written, whether he wrote it, you have no foundation for saying it is his signature have you?
A. Not in the case you have stated.
Q. You never saw Dr. Hamer, did you?

A. Yes sir, many times.
Q. You never saw him writing his name?
A. No sir.
Q. That same thing applies to D. E. Thompson, you never saw him write his name?
A. I couldn't say that I ever saw him sign his name, no sir.
Q. Nor C. E. Yates.
104 A. No sir.
Q. You simply find these names written and therefore you conclude that they must have written them?
A. No, I found the names attached, in many instances to papers to the department at Washington, and also found their names frequently among the records of the Capital National Bank.
Q. You never saw Mr. Walsh's name signed anywhere.
A. Oh yes.
Q. To what paper?
A. I have done business with Mr. Walsh. I have transacted some business for Mr. Walsh concerning property here in Seward.
Q. What I more particularly inquire about is Yates, and Thompson and Hamer. You didn't have any acquaintance with Mr. Thompson did you prior to the failure of the bank?
A. What do you mean by acquaintance.
Q. Did you ever meet him, and talk to him, or have any correspondence with him?
A. Never had any correspondence with him directly, only as an officer of the bank.
Q. You never had any correspondence with him as an officer of the bank did you?
A. I have done business where it was necessary for his signature to appear.
Q. What was it?
A. I couldn't state right now what it was.
Q. When you deposited money there, you didn't have anything to do with him, nor Yates, nor Hamer?
A. No that would be done with the proper clerks of the bank.

Mr. DEWEESE: We don't think he is qualified to testify, and the defendants Thompson, Yates and the estates of Walsh and Hamer each separately object as the witness is not qualified, and it is incompetent.

105 By Mr. THOMAS:

Q. Have you made an investigation of the books, files and documents of the Capital National Bank within the past few years?
A. Yes sir——
Q. How extensive has that examination been?
A. The longest at any one time was about three weeks. All together I have worked on these books in the neighborhood of six months.
Q. Have you examined the original papers, certificates of deposit, checks etc., that come out of the files and documents of the bank

upon which appear the signatures of these parties whose signatures also appear on the Exhibits you hold in your hand?

A. Yes sir.

Q. How frequently have you seen those checks and certificates of deposit to which these parties have signed their names?

A. Well I have seen the signatures there a great many times in one form, and sometimes in different form.

Q. Did you see their signatures among the books of the bank where they receipted for stock in the Capital National Bank on the stub book, "Certificate of Stock" stub book?

A. Yes sir.

Q. Do you know whether in looking through the files you found their signatures where they have endorsed checks issued to them in payment of dividends of the Capital National Bank?

A. I think not, the dividends were simply credited to their accounts.

Q. Have you found checks signed by them, which were by them issued or signed, and the funds drawn out of the bank?

A. I saw a great many checks there shortly after the failure of the bank.

Q. Checks which had been issued, and paid by the bank during its existence and prior to its failure?

A. Yes sir.

106 Q. And signed by the parties whose names appear on the Exhibits you have in your hand?

A. Some of them.

Q. Can you say Mr. Jones that you are acquainted with these signatures, and know whether or not they are the genuine signatures of the parties who purport to have signed them?

A. To the best of my knowledge I would say that I am.

Q. I will ask you to state whether Exhibit 961 bears the genuine signature- of C. W. Mosher, A. P. S. Stuart, W. W. Holmes, D. E. Thompson, R. O. Phillips, C. E. Yates and E. P. Hamer?

A. It does.

Q. I hand you exhibit 942 and ask you in whose handwriting that letter and the signature thereto is, if you know.

A. That letter and the signature is in the handwriting of E. P. Hamer.

Q. I hand you exhibit No. 943, and ask you to state if you know who wrote the body of the letter?

A. The body of the letter is written by C. W. Mosher.

Q. You may state if the signatures to that letter are the genuine signatures of C. W. Mosher, R. C. Outcalt, D. E. Thompson, E. P. Hamer, A. P. S. Stuart, R. O. Phillips and C. E. Yates.

107 A. They are their genuine signatures.

Q. I hand you Exhibit No. 944, and will ask you to state if that letter contains and has signed to it the original signatures of C. W. Mosher, C. E. Yates, Director R. O. Phillips, Director, D. E. Thompson, Director, A. P. S. Stuart Director, E. P. Hamer Director and R. C. Outcalt Director.

A. They are the genuine signatures of the parties named.

Q. I hand you now Exhibit No. 972, and will ask you to state if you know if that bears the original and genuine signatures of C. W. Mosher, C. E. Yates and R. O. Phillips.

108 A. They are.

Mr. THOMAS: That is all.
Mr. ROSE: That is all.
Mr. WHEDON: That is all.
Witness excused.

By leave of Court and consent of all parties the witness Mr. Lynch has leave to withdraw the following exhibits, and to substitute copies of same certified to by the Clerk of the District Court, —Exhibits 942, 943, 944, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971 and 972.

Court adjourns until June 2nd, at 9 o'clock A. M., at which time the taking of testimony in these cases will be resumed.
Jury cautioned and excused until said time.

JUNE 2ND, 1902—9 o'clock a. m.

G. W. POST, called as a witness on behalf of the Plaintiffs and being first duly sworn testified as follows:—

Direct examination.

By Mr. R. S. NORVAL:

Q. Where do you reside, Judge?
A. York, Nebraska.
Q. How long have you resided in York?
A. Oh, something over twenty-five years.
Q. What is your business?
A. I am a banker.
Q. You may state if you ever knew one E. W. Mosher, or Edwin M. Mosher?

109 A. Yes sir, I knew him.

Q. You may state where Mr. Mosher resided, in the early '90's and latter part of 89 and 88.
A. He resided in York.
Q. You may state if you were acquainted with his financial and property condition and standing in, commencing with 1890, and up to January 1893.
A. Yes I was pretty well acquainted with it at that time.
Q. You may state if you know whether or not he was owing obligations at that time, during those years, well from 1899 up to 1893.
A. Yes I know he was owing some obligations but I couldn't tell how many.
Q. You may state if you know whether or not Mr. E. W. Mosher was solvent and able to pay his debts from 1890 up to January 1893.

110 A. I think I know yes sir.

Q. Well state what his condition was with reference to

being able to pay his debts during that time, as to being solvent or insolvent.

A. I think he was insolvent.

Q. Did you know the firm of Stark & Mosher?

A. Yes sir.

Q. Did you know Mr. Stark a member of the firm of Stark & Mosher?

A. Yes sir.

Q. You may state if you knew his financial condition during the same period that I have interrogated you about as to Mr. Mosher.

111 A. I have not as intimate a knowledge of his affairs as I had of Mosher's. I knew in a general way about him, but I have not as intimate personal acquaintance with his business that I had with Mosher's.

Q. Do you know whether he paid his obligations or not?

Q. Do you know of the firm of Stark & Mosher, and their responsibility?

A. Yes, sir, in a general way.

Q. You may state what that was.

112 & 113 A. I think they are irresponsible.

Q. And were you acquainted with one William A. Sharar, who formerly lived at York?

A. Associated with Mr. Mosher there?

Q. Yes, sir.

A. Yes I knew him.

Q. And did you know him during the period I have been interrogating about?

A. Yes sir.

Q. Do you know his standing and property condition during that period?

A. Yes sir

Q. You may state what it was as to solvency or insolvency.

A. He was insolvent.

* * * * * * *

Q. You may state if you know whether or not there were judgments rendered against Mr. Mosher, which are unsatisfied, in York County?

* * * * * * *

114 Mr. EDWARD HURLBERT Jr., called as a witness on behalf of the Plaintiffs and being first duly sworn testified as follows:—

Direct examination.

By Mr. J. J. THOMAS:

Q. You may state your name.

A. Edward Hurlbert Jr.

Q. Where do you reside?

A. Hastings.

Q. How long have you resided there?

A. About two years.

Q. Are you acquainted with one Charles W. Mosher formerly President of the Capital National Bank at Lincoln?

A. Yes sir.

Q. Have you ever been associated with him in any business?

A. Yes sir.

Q. Were you associated with him in connection with a company commonly known as the Western Manufacturing Company?

A. I worked for Mr. Mosher, yes sir.

115 Q. When did that company commence to exist?

A. In 1884 or 1885 I believe.

Q. When did it cease to do business?

A. We ceased to be in active business in 1888 or 1889.

Q. You may state who comprised that company, or firm.

A. C. W. Mosher.

Q. Was there anyone else?

A. No sir.

Q. What was the nature of your interest in the company?

A. I worked on a salary and a per cent. of the profits.

Q. Did the company during its existence execute any notes payable to the Capital National Bank?

A. Yes sir.

Q. Who signed those notes for the Western Manufacturing Company?

A. I did.

Q. You may state what amount of notes the Western Manufacturing Company was owing the Capital National Bank at the time it ceased doing business in 1888 or 1889, when you say it did cease to do business.

116 A. My judgment would be,—I have no way of knowing definitely but my judgment would be that there was from $25,000.00 to $35,000.00 worth of old notes.

Q. Did they make any notes, or did you on behalf of the company execute any notes to the Capital National Bank after the Western Manufacturing Company ceased to do an active business?

A. Yes sir.

Q. Now you may state how long they continued, or how long you continued on behalf of the Western Manufacturing Company to execute notes to the Capital National Bank?

117 A. Until the failure of the bank.

Q. Until the failure of the Capital National Bank?

A. Yes sir.

Q. You may state if you know how many notes, or the amount of notes of the Western Manufacturing Company of which you were Manager, were held by the Capital National Bank, or had been rediscounted by the Capital National Bank, or both, at the time of its failure in January 1893.

* * * * * * *

Q. For what amounts or denominations were those notes that you signed as Manager of the Western Manufacturing Company, which were executed to the Capital National Bank.

118-131 A. They were mostly $5,000.00 each.
Q. Do you know what became of the notes after you executed them?
A. I do not.

* * * * * * *

132 Redirect examination.

By Mr. THOMAS:

Q. Did you state in answer to a question by Mr. Deweese, that in July 1889 all of the notes of the Western Manufacturing Co., had been taken up except one for $5,000.00.
A. I didn't say that I knew that positively, No.
Q. What did you state?
A. I stated that that was what I had been,—I don't remember what my answer was to that.
Q. Well what are the facts?
A. I don't know to a certainty that that is the fact, that they were all taken up except a $5,000.00 one.
Q. Did you get any information from Mr. Mosher as to that being a fact?
A. I believe he said "two or three" is the way he put it. Mr. Mosher told me that they had all been taken up.
Q. Except how many?
A. He said "two or three" I believe is the way he put it.
Q. Of what amount?
A. $5,000.00 each.
Q. But you don't know of your own personal knowledge whether any of them were in the bank or not?
A. I do not.
Q. At that time he informed you that they had all been taken up except two or three?
A. Yes sir.
Q. Then what notes you gave after that to the bank, you may state in a general way how that was done.
A. Well Mr. Mosher would call me into the bank and he would say "There is a note due on the 4th," this might be the first of the month, and he would say "there will be one of those notes due
133 on the 4th, and there will be another one due on the 5th" or 6th, or whatever it might be, and he would like to have me make him two or three notes, and when these notes are due he would take them up with these renewals.
1 Q. Then what would you do?
A. I would make the notes.
2 Q. And did you get the old ones that you spoke of being taken up by these notes?
A. Not always no.
3 Q. Did you in very many instances?
A. No not very many.
4 Q. In most cases did you ever get to see the old note that was supposed to be taken up by the renewal?

A. Not in a great many cases.

* * * * * * *

8 Q. When this company was organized what capital if any did Mosher put into the Company?

A. Why we borrowed from the Capital National Bank $25,000 00.

9 Q. Was that all that was put into the company?

A. That was all that was put in at that time.

10 Q. In other words did the company begin its exist-

134–144 ence on borrowed capital?

A. Yes sir.

Q. Wholly?

A. Yes sir.

Q. Now was the company financially successful or did you lose money?

A. We didn't make any money.

Q. Did you lose any money?

A. Yes sir.

Mr. Thomas: That is all.

* * * * * * *

145 By Mr. Thomas:

Q. Do you know what was done with the notes you signed for the company after you executed them and delivered them to Mr. Mosher?

A. No sir.

Q. Do you know whether they were issued as renewals of other notes or put into the bank as original paper?

A. I don't know only what I was told, that is all.

Q. You don't know whether they were used as rediscounts or otherwise do you?

A. I do not.

Q. You made notes whenever requested to do so by Mr. Mosher?

A. Yes sir.

Mr. Thomas: That is all.

Witness excused.

* * * * * * *

146 A. L. Clark, called as a witness on behalf of the plaintiffs and being first duly sworn testified as follows:—

Direct examination.

By Mr. J. J. Thomas:

Q. You may state your name.

A. A. L. Clark.

Q. Where do you reside?

A. In Hastings.

Q. What is your occupation?

A. I am a banker.

Q. With what institution are you associated?
A. The First National Bank.
Q. You are President of that bank?
A. Yes sir.
Q. How long have you been its President?
A. Since its organization in 1881.
Q. You have been President continuously from that date up to this?
A. Yes sir.
Q. I will ask you to state if the First National Bank of Hastings, of which you are President executed to the Capital National Bank of Lincoln, Nebraska, on or about the 20th day of July 1886 a note for the sum of $10,000.00?
147 A. It did not.
Q. Or about that time?
A. No sir.
Q. Did the bank of which you are President, the First National Bank of Hastings, execute to anyone for the Capital National Bank, such a note?
A. No sir.

Mr. THOMAS: That is all.

Cross-examination.

By Mr. DEWEESE:

No cross.

By Mr. THOMAS:

Q. Did the First National Bank of Hastings ever execute to the Capital National Bank, or to anyone for that bank, a note for the sum of $20,000.00 during the month of June or July 1886?
148 A. It did not.
Q. Did the First National Bank of Hastings, owe or pay to the Capital National Bank any such note?
A. No sir.

Witness excused.

F. S. JOHNSON, called as a witness for the plaintiffs and being first duly sworn testified as follows,—

Direct examination.

By Mr. R. S. NORVAL:

Q. Where do you reside?
A. Milford, Nebraska.
Q. How long have you resided there?
A. About 22 years.
Q. What is your business?
A. Milling and Banking business.

Q. And what firm are you a member of, if any?
149 A. Of the firm of F. S. Johnson & Co.
Q. And was that firm in business and doing business as bankers and millers in June and July 1886?
A. Doing business then as millers.
Q. You may state if you are the senior member of the firm.
A. Yes sir.
Q. And the Manager?
A. Yes sir.
Q. You may state if the firm, F. S. Johnson & Co., gave an obligation or note to the Capital National Bank, or to anyone for the Capital National Bank in June or July 1886 for $9968.00.
A. No sir.
Q. You would have had knowledge of it if any such transaction took place?
A. Yes sir, I would have had knowledge of it if it had taken place.
Q. Did you ever owe that bank such a note, or pay the bank such a note?
150–158 A. No sir.

Witness excused.

* * * * * * *

159 THE JONES NATIONAL BANK
vs.
MOSHER.

NEW YORK, *May* 21*st*, 1902.

LEONIDAS M. LAWSON, again being produced, testifies as follows:

Direct examination by Mr. BURR continued:

Q. What business were you engaged in during the year 1884 and prior thereto?
A. In the banking business.
Q. Where?
A. In the City of New York.
Q. And under what name or style?
A. The style of the firm was Donnell, Lawson & Simpson.
Q. Up to what period or date were you engaged in the banking business under the firm name and style of Donnell, Lawson & Simpson?
A. To May 14th, 1884.
Q. What connection, if any, did you have with the firm?
A. I was partner in the firm.
Q. State whether or not you were one of the managing partners of the firm?
A. Yes, I had to do with the general business of the firm, its management.
Q. And how long previous to May 14th, 1884, were you thus engaged?

A. Ever since the establishment of the firm, which was, I think, in about 1870.

Q. What happened or took place on the 14th of May, 1884?

160 A. The firm was compelled to suspend payment.

Q. In suspending payment what was done?

A. We immediately notified our clients, our customers, all over the country that we had suspended payment, and requested them to indicate where we should place any funds that were in transit coming to us for them.

Q. That isn't exactly what I mean. Was a receiver appointed?

161 A. Oh, yes, the firm made an assignment, and the assignee was Robert H. Weems.

Q. Made an assignment for the benefit of creditors?

A. Yes.

Q. What was the general nature of the business of the firm of Donnell, Lawson & Simpson prior to May 14th 1884?

A. We conducted a general banking business, we received deposits and paid on check or draft, and made discounts for our customers.

Q. You were, I might say a bank?

A. Yes, a bank, a general bank, general banking business.

Q. Are you familiar or were you familiar with the Marsh National Bank of Lincoln, Nebraska?

A. I know the bank, it was one of our correspondents, or one of our clients, kept an account with us.

Q. Kept an account with you when?

A. I don't know when the account began, but they were

162 keeping an account at the time of our suspension.

Q. Can you now state of your own recollection whether or not they had an account with your bank at the time of your suspension, May 14th, 1884?

A. I can so state, and I know it is a fact that they did have an account at the time we suspended on May 14th, 1884.

Q. Do you recall about how much money they had on deposit with you standing to their credit on May 14th, 1884?

A. I think it was over $25,000, probably $26,000.

163 Q. Do you know whether or not they had any security for that $25,000 or $26,000?

—. I don't know positively, but I am pretty sure they did not.

Q. To what class of creditors did they belong?

A. They were general creditors.

Q. Were they what you would call one of your general country accounts?

164 A. Yes.

Q. On the 14th of May, 1884, what happened so far as pertains to the possession and control of the business, property assets of the firm of Donnell, Lawson & Simpson?

A. Soon after the suspension the assignment was made for the benefit of our creditors, I think within a day or two, and Robert H.

Weems was the assignee, and all the property and assets of the firm were taken possession of by the assignee, and he proce-ded to administer upon them according to the laws of the State of New York.

Q. And about how long was he in possession of the business and assets and property of the firm of Donnell, Lawson & Simpson?

165 A. He retained control, possession and management of the business until the 20th of February, 1885.

Q. And on or about the 20th of February, 1885, what did he then do, if you know?

A. The property was turned back into the possession of the firm of Donnell, Lawson & Simpson, up to about the 20th of February, 1885, the date when the assignee reassigned and reconveyed to the firm, what did the members of that firm have to do with the business, property, assets and affairs of the old firm?

A. The members of the firm had nothing to do with the possession or control or management of the property, and the most they did do was to advise the assignee as to any business that might be proper for them to advise him about in the settlement of the estate, and the members of the firm were engaged in inducing the creditors to assent to a settlement which would result in their resumption of business.

Q. Are Mr. Donnell and Mr. Simpson now living.

166 A. No, they are both dead.

Q. And when did they die?

A. Mr. Donnell died, I thin-, in 1891, and Mr. Simpson I think in 1896.

Q. Who were the members of the firm of Donnell, Lawson & Simpson?

A. Robert W. Donnell, George E. Simpson and myself.

Q. Do you know what property the firm of Donnell, Lawson & Simpson had, or the individual members of that firm, which was not assigned to Weems as assignee?

A. I know none.

Q. Did they have any property to your knowledge other than that which was assigned?

167 A. None.

Q. Or means of paying their indebtedness other than out of the assigned estate?

A. None what ever; all property of every kind, nature and description of the firm of Donnell, Lawson & Simpson and the individual members thereof was assigned in possession as such assignee the firm and its members had no property or means whatsoever.

Q. Do you know whether or not the firm of Donnell, Lawson & Simpson or the individual members thereof, paid any of the general unsecured creditors of the firm during the month of May, 1884?

168 A. I know that they did not.

Q. Did they make any partial payments to the creditors?

A. They made payments to no creditors whatever.

Q. And is that true of the whole period of time during which Mr. Weems was in possession as assignee?

169 A. Yes, that is true; during the time that the assignee was in possession no payment whatever was made by any member of the firm to any creditor.

Q. Do you know whether or not during this period Mr. Weems as assignee made any payments to any creditors of Donnell, Lawson & Simpson?

A. He made no payments to the creditors of Donnell, Lawson & Simpson except to clear off the secured debts, the debts that the firm owed for which collaterial had been pledged.

Q. Can you state whether or not the Marsh National Bank of Lincoln, Nebraska, had any collateral as security to their indebtedness?

170 A. They did not.

Q. Do you know whether or not during the month of May, 1884, the firm of Donnell, Lawson & Simpson or any member thereof paid to the Marsh National Bank any sum of money what ever or gave to it any note of hand?

A. They did not; they paid no money to the Marsh National Bank and gave no obligation to it of any sort during that time.

Q. Can you tell me what Mr. Weems reassigned to the firm of Donnell, Lawson & Simpson on or about the 20th of February 1885?

171 A. When the assignee was discharged he reassigned to the firm of Donnell, Lawson & Simpson all of the property and assets which he had received except what had been necessary to pay the expense of his administration as assignee and what had been necessary to pay off the secured loans.

Q. Are you or were you acquainted with or familiar with the Capital National Bank of Lincoln?

A. I know that that bank, the Capital National Bank, was the successor of the Marsh Bank.

Q. When did that succession take place?

A. About June or July, 1884.

Q. Upon resumption of business by the firm of Donnell, Lawson & Simpson, or prior thereto or afterwards, do you know whether or not that firm paid to the Marsh National Bank or the Capital National Bank any sum of money whatever on account of the claim of the Marsh National Bank against the firm of Donnell, Lawson & Simpson?

172 A. Yes, I know.

Q. Will you state whether they did *not* not?

A. No, they did not. About the time of the discharge of the assignee they executed notes due in one year and two years for the indebtedness to the general creditors.

Q. And what notes did they execute, if any, to the Marsh or Capital National Bank?

173 A. They executed notes to them just as to all other general creditors, one half of the amount of the indebtedness of Donnell, Lawson & Simpson to them represented in one note, due one

year after the date, and the other half of the indebtedness represented by a note due two years after date.

Q. What other, further or different note or notes did the firm of Donnell, Lawson & Simpson execute to the Marsh or Capital National Bank.

A. None whatever.

Q. Do you know whether or not the note given to the Capital National Bank by the firm of Donnell, Lawson & Simpson for fifty per cent. of the indebtedness of Donnell, Lawson & Simpson to the Capital National Bank due in one year from its date was ever paid?

174 A. I don't know.

Q. Do you know whether or not the second note was paid?

A. Yes, I know that was not paid.

Q. Do you know whether or not on the 14th day of October, 1884, the firm of Donnell, Lawson & Simpson made and delivered to the Capital National Bank of Lincoln, Nebraska, their two notes, as follows: One for $4695.79 and the other for $5084.76?

A. They made no such notes; I know that I personally made no such notes, and from my intimate knowledge and management of the affairs of the business at that time I know that the other members of the firm made no such notes.

Q. Do you know whether or not the firm of Donnell, Lawson & Simpson made and delivered to the Capital National Bank

175 of Lincoln, Nebraska, on the 20th day of July, 1885, their note for $9,391.57, and again on the 24th of July, 1885, their note for $9,391.56?

A. I know that I personally made no such notes; and from my intimate knowledge of the management of the affairs and business at that time I know that the other members of the firm made no such notes.

Q. Do you know whether or not the firm of Donnell, Lawson & Simpson made and delivered to the Capital National Bank of Lincoln, Nebraska on the 13th day of August, 1885, their note for $10,000 and on the same date their note for $20,300?

176 A. I know that I personally made no such notes, and from my intimate knowledge and management of the affairs and business at that time I know that the other members of the firm made no such notes.

Q. Do you know of your own knowledge whether or not anything was paid to the Capital National Bank for or on account of the notes which I have just enumerated to you?

A. I know that nothing was paid upon those notes, the firm gave no such notes.

Q. Do you know whether or not any one was authorized by the firm to give such notes?

177 A. No one ever had authority to execute such notes.

Q. Do you know whether or not during the month of May, 1884, any money was paid by the firm of Donnell, Lawson & Simpson or the individual members thereof to the Chemical National Bank of New York for and on account of the indebtedness

due from Donnell, Lawson & Simpson to the Marsh National Bank?

A. I know of no such payments having been made.

Q. And if they had been you would know it?

A. I would have known it, yes.

Q. Were any payments made to any one or any firm
178-181 or corporation for or on account of this indebtedness of about $25,000 or $28,000 due the Marsh National Bank during the month of May, 1884, after the suspension of Donnell, Lawson & Simpson?

A. No such payment was made.

* * * * * * *

182 THE JONES NATIONAL BANK
vs.
MOSHER.

NEW YORK, *May 22nd*, 1902.

WILLIAM AYRES, JR., of lawful age, being by me first duly examined cautioned and solemnly sworn as hereinafter certified, deposeth and saith, as follows:

Q. State your name, age, residence and occupation?

A. William Ayres, Jr.; age 37 years; residence 342 West 85th Street, New York City; occupation banking.

Q. Of what institution are you now an employe?

A. Chemical National Bank of New York.

Q. How long have you been in the service of the Chemical National Bank of New York?

A. Since October 4, 1880.

Q. And what is your official position now?

A. Clerk and assistant to the officers.

Q. And what are your particular duties?

A. With other capacities I have charge of the records.

Q. In the management of the affairs of the bank what comes under your immediate supervision?

A. Caring for the records, books of account, etc.

Q. Who has the immediate charge of all the records, both books of original entry, ledgers, correspondence, deposit slips, etc.?

A. I have.

Q. And how long have you had immediate charge of such records and books?

A. For twenty years.

Q. For twenty years last past?

A. Yes, 1882 to 1902.

Q. And during all that period have all the books, records and papers of the bank been in your custody and control?

A. Yes sir.

183 Q. And who is charged with the responsibility of the safekeeping of these books and records?

A. I am.

Q. Are you or were you acquainted with the Marsh National Bank of Lincoln, Nebraska?

A. I was, with its account on our books.

Q. During what period?

A. In 1884 and for some time prior thereto.

Q. And were you acquainted with the Capital National Bank of Lincoln, Nebraska?

A. I was.

Q. During what period?

A. From the time of its organization.

Q. Down to when?

A. Its failure. I was acquainted with its account on our books.

Q. Did the Marsh National Bank of Lincoln, Nebraska do business with the Chemical National Bank?

A. Yes,—at that time,—1884.

Q. Up to about the last of May, 1884?

A. Yes sir.

Q. Did the Capital National Bank of Lincoln, Nebraska, do business with the Chemical National Bank?

A. Yes, from about June 2, 1884 to the date of their failure; 1893 I believe.

Q. What was the nature of that business?

A. General banking, receiving of remittances and charging to their account of all drafts, etc., drawn by them that were honored by us at that time.

Q. It was a general banking account?

A. Yes.

184–200 Q. And you were, I might say, what is known as their New York correspondent?

* * * * * * *

201 Q. Assuming that the Marsh National Bank of Lincoln, Nebraska charged the Chemical National Bank with $10,000 on the 19th of May, 1884, with the memorandum against it "D. L. & S., have you been able to find a corresponding credit on the account of the Chemical National Bank by this process of elimination, which you have explained in your testimony?

202–205 A. I have not.

Q. From what you have been able to accomplish and learn in this elimination of the charges and credits kept between these two banks, are you able to state whether the Chemical National Bank ever received and gave credit to the Marsh National Bank for an item of $10,000 entered on Exhibit B as charged by the Marsh National Bank against the Chemical National Bank on May 19th, 1884, with the memorandum marks against it "D. L. & S."?

206–212 A. Apparently the item in question was never received and credited to the Marsh National Bank.

* * * * * * *

213 Q. Have you in your bank at this time a record or book in which was kept an account with the Capital National Bank during the months of December, 1885, and January, 1886?

214-239 A. We have the ledger which contains the accounts of the Capital National Bank at those dates.

* * * * * * *

240 & 241 Mr. I. A. BAKER, called as a witness on behalf of the Plaintiffs and being first duly sworn testified as follows,—

* * * * * * *

242 At a session of the Circuit court of the United States for the District of Nebraska, continued and held pursuant to adjournment at the United States Court Room, in the City of Lincoln on the 10th day of January 1894, the Honorable Elmer S. Dundy, Judge being present and presiding in said Court, the following among other proceedings were had and done to-wit:—

39 "Q."

KENT K. HAYDEN, Receiver of the Capital National Bank of Lincoln,
vs.
CHARLES W. MOSHER.

Default and Judgment.

Now comes the plaintiff herein, and the defendant being in default for answer and demurrer, the court finds that the allegations of the petition are confessed by him to be true and find that said defendant Charles W. Mosher is indebted to the plaintiff Kent K. Hayden, Receiver of the Capital National Bank of Lincoln, Nebraska, in the sum of $84,294.48.

It is therefore considered by the court that the said plaintiff recover from the said defendant the said sum of Eighty four thousand Two hundred Ninety four and 48/100 ($48,294.48) Dollars and $— costs herein expended and that execution issue therefor.

THE UNITED STATES OF AMERICA, *District of Nebraska, ss:*

I, Elmer D. Frank, Clerk of the Circuit Court of the United States for the District of Nebraska Do Hereby Certify that the above and foregoing is a true copy of an order entered upon the Journal of the Proceedings of said court, in the cause therein entitled; that I have compared the same with the original entry of said order and it is a true transcript therefrom, and of the whole thereof.

Witness my official signature and the seal of said court, at Omaha in said District this 2nd day of January, A. D. 1895.

[SEAL.] ELMER D. FRANK, *Clerk.*

Filed in District Court 1–5–'95 4 P. M.
A. J. NEWMAN, *Clerk.*

Ex. 991.

243 Q. I will ask you if that judgment has been satisfied of record, have you ever examined the record?

Q. Please examine the record and see.
(Witness examines record.)
A. No sir.
Q. Has any portion of the judgment been paid and satisfied?
A. None whatever. No credits on here at all.

* * * * * * *

244 Q. You may state if any portion of the judgment represented in Exhibit No. 992 has been paid or credited.
A. No sir, no credits whatever.

* * * * * * *

244½ Exhibit No. 992 received and read in evidence as follows:—

245 At a session of the Circuit Court of the United States for the District of Nebraska, continued and held pursuant to adjournment, at the United States Court Room, in the city of Lincoln, on the 9th day of February 1894, the Honorable Elmer S. Dundy, Judge being present and presiding in said Court, the following among other proceedings were had and done to-wit:—

46 "Q." KENT K. HAYDEN, Receiver,
vs.
CHARLES W. MOSHER ET AL.

Now come the parties hereto by their attorneys and both parties consenting in open court that Judgment may be entered herein in favor of said plaintiff and against said defendants for the sum of $36,428.10

It is therefore considered, ordered and adjudged by the court that said plaintiff Kent K. Hayden Receiver of the Capital National Bank of Lincoln, Nebraska, have and recover of and from the said defendants Charles W. Mosher, and Richard C. Outcalt doing business as Mosher — Outcalt, the said sum of Thirty six thousand Four Hundred Twenty eight, and 10/100 ($36,428.10) Dollars together with $— costs of this action, and that execution issue therefor.

THE UNITED STATES OF AMERICA, *District of Nebraska, ss:*

I, Elmer D. Frank Clerk of the Circuit Court of the United States for the District of Nebraska, Do Hereby Certify that the above and foregoing is a true copy of an order entered upon the Journal of the Proceedings of said Court, in the cause therein entitled, that I have compared the same with the original entry of said order and it is a true transcript therefrom and of the whole thereof.

Page 1 Ex. 992.

246 Witness my official signature and the seal of said court, at Omaha, in said District this 2nd day of January, A. D. 1895.
[SEAL.] ELMER D. FRANK, *Clerk.*

Filed in District Court 1-5-95 4 P. M.
A. J. NEWMAN, *Clerk.*

Page 2 Ex. 992.

247 Q. I now hand you Exhibit No. 993 and will ask you if that is a part of the records and files of your office?

A. Yes sir.

Q. And is now in your custody as Clerk of the District Court?

A. Yes sir.

Q. You may state if that judgment has been, any portion of it, collected or paid.

A. No sir, I believe not. The record don't so show.

Q. You may state if any portion of that has been paid, Exhibit No. 993.

A. No sir.

Mr. NORVAL: I now offer in evidence Exhibit No. 993.

248 Exhibit No. 993 received and read in evidence as follows:

249 Transcript of Proceedings Lately had Before A. C. Montgomery, County Judge in and for the County of York, in the State of Nebraska, between,

No. 740.

SARAH A. BROWN, Plaintiff,
and
EDWIN W. MOSHER, Defendant.

SEPT. 24", 1894.

Plaintiff filed two bonds each in the sum of $400.00 with three coupons attached to each bond in the sum of $14.00 which bonds and coupons are dated Oct. 18th 1889. Part of said coupons attached to said bonds are past due and the principal of each bond is due Nov. 1" 1894. On which bonds and coupons the plaintiff asks judgment. The said bonds and coupons are — too great length to record in the Docket. The defendant on the same day on which the bonds and coupons were filed in this office appeared personally and waived process and entered his appearance in this cause and with the consent and at the request of the plaintiff the said defendant confessed that he is indebted to the plaintiff upon said coupon bonds and coupons attached in the sum of $889.85. And asks to have judgment rendered against him therefore. It is therefore considered by me that the said plaintiff Sarah A. Brown recover from the said *said* defendant Edwin W. Mosher the sum of $889.85 with costs of this action taxed at $1.80. This judgment to draw interest at the rate of ten per cent. from Nov. 1" 1894.

A. C. MONTGOMERY,
County Judge.

Judge's Fees.

Docketing	.25
Filing papers	.30
Judgment	.50

Ex. 993.

250

Record	.25
Ent. Vol. App. Deft	.25
Satisfaction	.25
	$1.80
Transcript	.75
Paid by Plaintiff	$2.55

STATE OF NEBRASKA, *York County, ss:*

I, A. C. Montgomery County Judge in and for York County and said state do hereby certify that the above is a full and correct copy of my docket of all the proceedings had before me in said cause.

[SEAL.] A. C. MONTGOMERY,
County Judge.

Filed in Dist. Court Oct. 8th, 1894. 5 P. M.
A. J. NEWMAN, *Clk.*

Page 2 Ex 993.

251 Q. I now hand you Exhibit No. 994, and will ask you if that is a part of the records and files of your office?

A. Yes sir.

Q. And now in your custody as Clerk of the District Court of York County?

A. Yes sir.

Q. You may state if that Judgment has been entered upon the Judgment Record, and indexed in York County as required by law.

A. Yes sir.

Q. Has any portion of that Judgment been collected or paid?

252 A. No sir, no entries upon the Judgment docket whatever.

Mr. NORVAL: I offer in evidence Exhibit No. 994.

Exhibit No. 994 received and read in evidence being as follows:—

253 EX. 994.

County Judge in and for the County of York, in the State of Nebraska, between

No. 739.

SARAH A. BROWN, Plaintiff,
and
EDWIN W. MOSHER, Defendant.

SEPT. "24," 1894.

Plaintiff filed two bonds each in the sum of $400.00 with three coupons attached to each bond in the sum of $14.00 which bonds

and coupons are dated Oct. "18" 1889, part of said coupons attached to said bonds are part due and the principal of each bond is due Nov. "1" 1894. On which bonds and coupons the plaintiff asks judgment. The bonds and coupons are at *two* great length to record in the Docket. The defendant on the same day on which said bonds and coupons were filed in this office appeared personally and waived process and entered his appearance in this cause and with the consent and at the request of the plaintiff, the said defendant confessed that he is indebted to the plaintiff upon said coupon bonds and coupons attached in the sum of $889.85. And asks to have judgment rendered against him therefor.

It is therefore considered by me that the said plaintiff, Sarah A. Brown recover from the defendant the sum of $889.85 with costs of this action taxed herein at $1.80. This judgment to draw interest at the rate of 10 per cent. from Nov. "1" 1894.

A. C. MONTGOMERY,
County Judge.

Judge's Fees.

Docketing	.25
Filing papers	.30
Judgment	.50
Record	.25
Ent. Vol. App. Deft.	.25
Satisfaction	.25
	1.80
Transcript	.75
Paid by Plaintiff	2.55

Ex. 994. P. 1.

254 STATE OF NEBRASKA, *York County, ss:*

I, A. C. Montgomery, County Judge in and for York County and State of Nebraska, do hereby certify that the above is a full and correct copy of my docket as all the proceedings had before me in said cause.

Dated this 4th day of October 1894.

[SEAL.] A. C. MONTGOMERY,
County Judge.

Endorsed: Filed Oct. 8th 1894. 5 P. M. A. J. Newman, Clerk.

Ex. 994. P. 2.

255 Q. I now hand you Exhibit No. 995 and will ask you to state whether or not that is a part of the documents and files of your office as Clerk of the District Court of York County, Nebraska?

A. Yes sir.

Q. And is it in your possession as such officer?
A. Yes sir.
Q. You may state if that judgment has been entered up on the judgment record and indexed in the court records of York County.
A. Yes sir it is.
Q. You may state if any portion of that judgment has ever been paid.
A. No sir none whatever.

Mr. NORVAL: I now offer in evidence Ex. No. 995.

256 Exhibit No. 995 is received and read in evidence as follows:—

257 Transcript of Proceedings lately had before A. C. Montgomery, County Judge in and for the County of York, in the State of Nebraska, between

No. 741.

SARAH A. BROWN, Plaintiff,
and
EDWIN W. MOSHER, Defendant.

SEPT. 24TH, 1894.

Plaintiff filed two bonds in the sum of $400.00 with three coupons attached to each bond in the sum of $14.00 which bonds and coupons are dated Oct. 18" 1889. Part of said coupons attached to said bonds are past due and the principal of each bond is due Nov. 1" 1894. On which bonds and coupons the plaintiff prays judgment. The said bonds and coupons are of too great length to record in the docket The defendant on the same day, on which the bonds and coupons were filed in this office appeared personally, and waived process, and entered his appearance in this cause, and with the consent and at the request of the plaintiff the said defendant confessed that he is indebted to the said plaintiff upon said coupon bonds and coupons attached in the sum of $889.85, and asks to have judgment rendered against him therefor. It is therefore considered by me that the said plaintiff Sarah A. Brown recover from the said defendant Edwin W. Mosher the sum of $889.85 with costs of this action taxed herein at $1.80.

Filed in Dist. Court Oct. 8th, 5 P. M., 1894.

H. J. NEWMAN, *Clk.*

258–279 No. 741.

This judgment to draw interest at the rate of ten per cent. per annum from No-. 9" 1894.

A. C. MONTGOMERY,
County Judge.

Judge's Fees.

Docketing	.25
Filing papers	.30
Judgment	.50
Record	.25
Ent. Vol. App. Deft.	.25
Satisfaction	.25
	$1.80
Transcript	.75
Paid by Plaintiff	$2.55

STATE OF NEBRASKA, *York County, ss:*

I, A. C. Montgomery County Judge in and for York County, and said state do hereby certify that the above is a full and correct copy of my docket of all the proceedings had before me in said cause.

Dated this 4th day of October 1894.

[SEAL.] A. C. MONTGOMERY,
County Judge.

Ex. 995.

280 Mr. G. W. SHRECK, called as a witness on behalf of the plaintiffs and bein- first duly sworn, testifies as follows:—

Direct examination.

By Mr. R. S. NORVAL:

Q. Where do you reside?
A. York.
Q. What is your business at present?
A. I am in the real estate business.
Q. What official position did you hold in York County in 1890 and subsequent and prior?
A. I was Sheriff of York County.
Q. How long were you Sheriff?
A. From 1888 to 1893.
Q. You may state if you were well acquainted with one W. A. Sharar, who lived in York County?
A. Yes sir.
Q. Were you acquainted with his financial standing up to 1893?
A. Yes sir.
Q. You may state if you know whether or not he was solvent or insolvent?
281 He was insolvent.
Q. And how long had he been insolvent?
A. Oh, for a number of years before that, I don't remember now.
Q. About how long had you known him?

A. I had known him about,—since 1880.

Q. And he has been insolvent ever since?

A. He has been insolvent since 1887 anyway.

Q. Did you know one Mr. Stark, that lived there, that was in business with Mr. E. W. Mosher?

A. Arthur M. Stark?

Q. Yes sir.

A. Yes sir.

Q. You may state how long you knew Mr. Arthur M. Stark?

A. I knew him since he came to York County I suppose, about eight or ten years. I knew him from the time he came there until he left.

Q. You knew him for about eight or ten years, now when did he leave there, about how long ago?

A. He must have left there along in 1892, somewheres along there, from 1890 to 1892.

282 Q. With reference to the time of the failure of the Capital National Bank, which was on January 21st, or 23rd, 1893, how long had he left before that?

A. Oh, some two or three years before that, is my recollection.

Q. You may state if you knew anything about his financial condition while he resided there in York?

A. That is a pretty hard question to answer "yes" or "no."

Q. The question is, do you know.

A. Yes sir.

Q. Now you may state what was his financial condition at that time with reference to solvency or insolvency.

A. He was always consider- insolvent.

Q. And for how long?

283 A. I think during the whole time he was there.

Q. You may state if you were acquainted with one Edwin W. Mosher

A. Yes sir.

Q. How long did you know him?

A. Oh, I had known him for fifteen years or more.

Q. You knew him from the time he came to York?

A. Yes sir.

Q. You were there when he came?

A. I think so, yes sir.

Q. About when did he leave York?

A. He left York in 1893, I think.

Q. Before or after the bank failure, the Capital National Bank failure?

A. It was afterwards, I think.

Q. You may state if you were acquainted with his financial standing and condition from 1890 up to 1893 the time of the failure of the Capital National Bank?

A. Yes sir.

Q. You may state what his condition was as to solvency or insolvency.

284-295 A. From the latter part of 1890 to 1893 he was considered insolvent.
Q. From the latter part of 1890 to 1893?
A. Yes, that is he was execution proof, supposed to be.
Q. You have known him since then?
A. No sir, not since he left York.
Q. Has he ever returned to York, since he went away?
A. Not that I remember of.

Mr. NORVAL: That is all
No cross examination.
Witness excused.

* * * * * * *

296 Mr. C. W. HAMILTON, called as a witness on behalf of the Plaintiffs and being first duly sworn testified as follows:—

Direct examination.

By Mr. THOMAS:

Q. You may state your name?
A. Charles W. Hamilton.
Q. You reside in Omaha, this state?
A. I do.
Q. How long have you resided there?
A. I was born there.
Q. How old are you?
A. I was born October 9th, 1859.
Q. What is your occupation?
A. Banker.
Q. With what bank are you connected?
A. United States National.
Q. In what capacity?
A. At present as Vice President.
Q. How long have you been connected with that bank?
A. Since its organization.
Q. What was the date of its organization?
A. June,—I couldn't remember the exact date, but it was June 1883.
Q. And you have been connected with the institution ever since its organization?
A. Yes sir.
Q. You may state if you were in the bank and connected with it during the month of June 1886.
A. Yes sir.
Q. Were you an officer of the bank at that time?
A. I think I was.
Q. In what capacity?
A. I think I was Assistant Cashier.
297 Q. I will ask you what book this is I now hand you?
A. That is what is commonly called in a bank, a Balance Book, a form of ledger.

Q. Is that one of the books of the United States National Bank, of which you are an officer?

A. It is.

Q. Was that book kept and used in the current work of the bank during the month of June 1886?

A. For the month of June 1886.

Q. Was used and kept in the regular and ordinary course of business?

A. Used and kept in the regular and ordinary course of business.

Q. Does it contain the transactions and current work of the bank during that month?

A. It contains certain accounts that were kept under the letters "A" to "K" during that month.

Q. You may state the nature of the accounts that were kept in that book.

A. They were accounts of individuals, firms and banks, whose title or name began with the letters from "A" to "K," and during the month of June 1886.

298 Q. Does that book contain the account of your bank, with Capital National Bank during the month of June 1886?

A. It contains the account of the Capital National Bank with the United States National Bank during the month of June 1886.

Q. Are all the transactions that the United States National Bank had with the Capital National Bank of Lincoln, during the month of June 1886 contained in that book?

A. All the credit and debit transactions would appear in this book.

Q. Now I will ask you to examine that book and state if on or about the 21st day of June 1886 the United States National Bank of Omaha, credited the Capital National Bank of Lincoln Nebraska with an item of $20,000.00.

A. I have examined the book and there is no credit so much as $20,000.00 during the month of June.

Q. Of 1886.

A. 1886.

Q. Is there anything on that book during that month that would indicate a transaction of that kind with the Capital National Bank during the month of June 1886?

299 A. There is nothing I have been able to find of a credit *of a credit* as large as that amount.

Q. If any transaction were had which would entitle the Capital National Bank of Lincoln in your course of business, to a credit, would that amount of credit appear upon this book?

300–317 A. Why, I believe it would.

Q. Could it properly appear upon any other book?

A. Why, no book that I know of.

Q. You may state if that book you have in your hands, and to which you have referred is a book of original entry.

A. I believe it is a book of original entry, it is understood as such.

Q. Is it in fact, such?

A It is in fact a book of original entry.

Mr. THOMAS: That is all.

* * * * * * *

318 Page 15, Section 17.

"No officer or clerk of this bank shall pay any check drawn upon it, or pay out money on any order, unless the drawer of such check or order, at the time of the presentation thereof, have on deposit in the bank funds sufficient to meet such check or order.

* * * * * * *

319–322 Page 17, Sec. 26.

"The Board of Directors shall appoint at their option, a committee of three members thereof, (including the president) whose duty it shall be to examine every twelve months at least the affairs of this bank, to count its cash and compare its assets, and liabilities with the accounts of the General Ledger, ascertain whether these accounts and all others are correctly kept, whether the condition of the bank corresponds therewith, and whether the bank is in a sound and solvent condition, and to reccommend to the board, such changes in the manner of doing business &c. as shall seem desirable, the result of which examination shall be reported to the board at the next regular meeting thereafter.

* * * * * * *

323 Page 36.—Special Meeting.

"At special meeting of Directors held May 23, 1884, at office of Marsh National Bank, there were present W. A. Sharar E. W. Mosher, R. C. Outcalt, and C. W. Mosher.

On motion of Mr. Outcalt the name of the bank shall be Capital National Bank after May 31st, at close of business on that day, and that out of the undivided profits as shown by books at close of business May 31st, $1500.00 shall be carried to surplus a/c, and the balance of profits shall be divided among stockholders in lieu of regular July dividend.

That on June 1st, the Capital stock of this bank shall be increased to $200,000. and proper notification of the same be forwarded to the Comptroller of Currency.

Resignation of C. W. Marsh as Vice Prest. having been received same was accepted and H. J. Walsh elected to fill the vacant place, to commence at close of business on May 31st, 1884.

From Ex. 26 P. 6.

324–339 The number of directors having been increased to seven C. E. Yates and E. P. Hamer were elected to make up the number to commence May 31st, 1884.

Messrs. R. C. Outcalt, C W. Marsh, E. W. Mosher, W. A. Sharrar resignation- having been handed in, same was excepted and the names of A. P. S. Stuart, W. W. Holmes, R. O. Phillips, and D. E.

Thompson proposed in their places and were duly elected to take office at close of business May 31st, 1884.

Adjourned.

C. W. MOSHER, *Pt.*

R. C. OUTCALT, *Sec'y.*

* * * * * * *

340 H. J. WHITMORE, called as a witness on behalf of the plaintiffs and being first duly sworn, testified as follows:—

Direct examination.

By Mr. THOMAS:

Q. You may state your name?
A. H. J. Whitmore.
Q. Where do you reside?
A. At Lincoln, Nebraska.
Q. What is your occupation?
A. I am an attorney.
Q. What has been your occupation during the past ten years, or so.

A. I have practiced law, and have been a National Bank Examiner, also Receiver of a National Bank during that time.

Q. When were you a National Bank examiner?
A. From July 1894, until the First of February 1889.

Q. What was the nature of the work you had to do in connection with that office?

A. Perform the duties generally of a National Bank examiner, make examinations of National Banks in the State of Nebraska, and elsewhere, if directed by the Comptroller of the Currency. Such examinations as are required by the Comptroller to be made by examiners, inspection of the books, examine the assets, count the cash and verify the accounts.

Q. Were you continuously engaged in that class of work while you were bank examiner?
A. Yes sir.
Q. When did you act as Receiver?

A. From the first of February until the first of January
341 last. I was temporary Receiver of the bank from about the 19th of October 1898, until I was appointed permanent Receiver the first of February 1899. Several months I acted as temporary Receiver. I was permanent Receiver of the same bank.

Q. Of what bank were you Receiver?
A. First National Bank of Neligh, Nebraska.

Q. Do you sustain any relation at this time in connection with the office of the Comptroller of the Currency, referring to whether you have in your custody any books, and documents of the Capital National Bank.

A. I have charge of such books and records of the Capital National Bank of Lincoln that have been brought here for use in this trial. I have receipted to them, that is receipted to the Comptroller for the books, or to his representative who was here.

Q. Did you receive the books from Mr. Lynch who was here for the department?

A. Yes sir.

Q. Now I will ask you to state if you have made an examination of the books in the hands of the Receiver of the Capital National Bank.

A. I have to some extent.

Q. To what extent?

A. Well I have gone over quite a number of books and records of the bank in relation to certain matters.

Q. How extensively have you gone into that?

A. Well I have examined different accounts, and different books from the time of the organization of the Marsh National Bank down to the failure of the Capital National Bank.

Q. Have you examined any of the books prior to that time, of Marsh Brothers Mosher & Co.?

A. I have.

Q. Did you examine the book known as "Ledger of Marsh Bros. Mosher & Co. No. 1 which is identified as Exhibit 9?

A. I have.

342 (Reporter identifies Exhibit No. 9.)

Q. Have you examined the Ledger of the Marsh National Bank identified by the reporter as Exhibit No. 10?

A. I have.

Q. Have you made comparisons between these two books to ascertain whether or not accounts of the Ledger of Marsh Bros. Mosher & Co., have been transferred to the Ledger of the Marsh National Bank?

A. I have.

Q. I will ask you to state whether or not the accounts as they appear in the Ledger of Marsh Bros. Mosher & Co., have been transferred to the Ledger of the Marsh National Bank.

343 & 344 A. They have not in every instance.

Q. Have they in general?

A. I think in general the accounts were transferred correctly from Marsh Bros. Mosher & Co., to the Marsh National.

* * * * * * *

345 Q. Have you examined the Ledger account to ascertain about how much Donnell, Lawson & Simpson were owing the Marsh National Bank about 14th day of May 1884?

346 A. I have.

Q. You may state about how much the books of the Marsh National Bank show that Donnell, Lawson & Simpson owed the bank at about the time stated.

A. Something like $30,000.00.

Q. Calling your attention to Journal of the Marsh National Bank referred to as Exhibit 1, I will ask you to examine that book and state if you find in it an entry by which the firm of Donnell,

Lawson & Simpson are given credit on the books of the Marsh National Bank?

347 A. I do.

Q. You may state where you find that entry giving the page.

A. On page 532 of Journal 1, of the Marsh National Bank, under date Monday May 19", 1884.

Q. Upon what line does that entry referred to appear?

A. I find four credits to Donnell, Lawson & Simpson on this date.

Q. Upon what lines do they appear commencing from the top of the page after the date line?

A. The first is $10,000.00 on line 14 from the top. The second is $3,048.88 on line 15 from the top, the third is $2,000.00 on line 16 from the top, and the 4th is $2.00 on line 17 from the top.

Mr. THOMAS: We offer in evidence lines 14-15-16 & 17 on page 532 of exhibit 1, counting from the top.

348 Entries offer- received and read in evidence, as follows, the same being marked Exhibit No. 998.

"MONDAY, *May 19th*, '84.

159,	Donnell, Lawson & Simpson		$10,000.
159,	"	Transfer'd to Chem	3,048.88
159,	"	" " "	
		Rem. Beatrice	2,000.
129,	"	Int. on Discounts "April"	2.
			$15,050.88

* * * * * * *

Q. What does the posting of those items in the right hand column of this account, indicate?

349 A. Indicates a Credit to the account of Donnell, Lawson & Simpson.

Q. Upon what lines commencing from the top of the page, 159 are those entries posted?

A. Lines 29, 30, 31 & 32 from the top of the page.

Mr. WHEDON: What are those figures you just made in that book?

A. They are the numbers of the lines from the top of the page.

Q. Have you in your examination of these books made figures in that way as you have examined them?

A. No sir.

Mr. THOMAS: We offer in evidence lines counting from the top, number 29–30–31 and 32, on the credit side of the Ledger 1, Exhibit No. 10, on page 159, being the account of Donnell, Lawson & Simpson.

No objection.

Entries received and read in evidence, marked Exhibit No. 999, as follows:—

159.

Donnell, Lawson & Simpson.

	1884.			
	May 19.		532	$10,000.
350	"	Trans. to Chemical.....	"	3,048.88
	"	" " Beatrice	"	2,000.00
	"	Int. Dscts.....	"	2.00

Q. You may state what is indicated by the figures 5–3–2 which appear in these entries.

A. Those refer to the pages of the Journal on which those entries were first written.

Q. Again calling your attention to the Journal just referred to and on page 533 thereof, I will ask you if you find on that page an entry showing a charge to the Chemical National Bank amounting to $10,000.00?

A. I do.

Q. What is the date of that entry?

A. Monday May 19th, 1884.

Q. Is there an account with the Chemical National Bank, contained in the Ledger of the Marsh National Bank?

A. Yes sir, page 358, Ledger 1, Marsh National Bank.

Q. Is that account of the Marsh National Bank, with the Chemical National Bank of New York?

A. Yes sir.

Q. You may state if on May 19th, 1884, the sum of $10,000.00 is charged to the account of the Chemical National Bank of New York, on the Journal and Ledger of the Marsh National Bank just referred to.

A. Yes sir, it is.

Q. Upon what line of the Journal do you find that entry?

A. Line 29 from the top.

Mr. THOMAS: We offer in evidence line 29 from the top of page 533 of Exhibit 1.

351 The entry offered is received and read in evidence and marked Exhibit 1000, as follows:—

"MONDAY, *May* 19/84.

358. Chemical Nat. Bank D. L. & S..... $10,000.00

Q. What is indicated by the initials "D. L. & S."

Q. State if you can tell from an examination of the books and *and* your knowledge of bookkeeping what is referred to and indicated by the letters "D. L. & S."

352 & 353 A. From an inspection of all the entries on both the debit and credit side of the Journal for that date I should say that the letters "D. L. & S." referred to Donnell, Lawson & Simpson.

* * * * * * *

354 Q. I will ask you to state Mr. Whitmore if you find any other credits to the account of Donnell, Lawson & Simpson on the books of the Marsh National Bank during the month of May 1884?

A. I do,—page 538 of Journal 1, of the Marsh National Bank.

Q. I will ask you if you find a credit to this firm on the books of the Marsh National Bank on May 26th 1884.

A. Yes sir, on page 544 of Journal 1, of the Marsh National Bank.

Q. On what line commencing from the top?

A. On the 20″ line from the top.

Mr. THOMAS: We offer in evidence the 20″ line from the top on page 544, under date of May 26th 1884, of Journal 1, of the Marsh National Bank, identified as exhibit 1.

355 The offer received and read in evidence, as follows:—

544. MONDAY, *May* 26, '84.

159. Donnell, Lawson & Simpson..... $10,000.00."

Q. You may state Mr. Whitmore if that entry is posted or transferred to the corresponding Ledger of the Marsh National Bank?

A. It is so transferred.

Q. To what page of what book?

A. Page 159, Ledger 1 of the Marsh National Bank, on the 25th line from the top in the right hand column.

356 Q. Does that indicate the Credit column of that account?

A. Yes sir.

Q. What is the effect of that entry upon the account of Donnell, Lawson & Simpson?

A. It shows a payment by Donnell, Lawson & Simpson to the Marsh National Bank.

* * * * * * *

357 The entry offered received and read in evidence, being as follows,—(Exhibit #1002.)

1884. 159.

May 26th,—page 544 of the Journal, Cr..... 10,000.00."

Q. I will ask you Mr. Whitmore if you find a credit to the account of Donnell, Lawson & Simpson on the books referred to, under date of May 27th, 1884?

A. I do, On page 546, Tuesday May 27th, 1884.

Q. On the Journal of the Marsh National Bank?

A. Journal 1, Marsh National Bank.

Q. What line?

A. 16th line from the top.

Mr. THOMAS: We offer in evidence the entry on the 16th line from the top.

358 The entry offered is received and read in evidence as follows;—(Exhibit 1003)

"546. TUESDAY, *May* 27/84.
159. Donnell, Lawson & Simpson. To Bal. a/c..... $8174.70."

Q. You may state if that entry was transferred to the books of the,—
A. Transferred to line 36 from the top of the page, under the right hand column of page 159, Ledger 1, Marsh National Bank.
Q. The account of Donnell, Lawson & Simpson?
A. The account of Donnell, Lawson & Simpson.
Q. What was the effect of that entry?
A. It was a credit to Donnell, Lawson & Simpson in that amount.

Mr. THOMAS: We offer in evidence entry on line 36 in the right hand column, page 159, of Exhibit 10, also the heading of the page, the year, month and date.

359 The entry offered is received and read in evidence as follows,—(Exhibit No. 1004)

"159. 1884.
May 27th, To bal. a/c,— 546. $8174.70."

Q. I will ask you to state if you have made an examination of the books of the bank, of the Marsh National, to ascertain if any notes, or Bills Receivable of Donnell, Lawson & Simpson were taken into the bank and entered in its assets subsequent to the month of May 1884?
A. I have.
Q. You may state whether you find any.
A. Yes sir, I have found entries on the books showing notes of Donnell, Lawson & Simpson taken by the Marsh National Bank subsequent to May 1884.
Q. Calling your attention again to the items appearing on the Journal of the Marsh National Bank under date of May 27th 1884, I will ask you to state if you find any entry on that date indicating that a note of Mr. Moshers was taken into the bank, as part of its assets on that day?
A. I find that there is a record of a note by Mosher, taken on that day.
Q. Where does that entry appear?
A. On the 4th line from the top of page 547, under date of May 27th, 1884.

Mr. THOMAS: We offer in evidence the entry on the 4th line from the top of page 547, with the heading Tuesday May 27th, 1884, page 547 of Exhibit # 1.
Received and read in evidence without objection, as follows,—(Ex. No. 1005.)

Tuesday, May 27/84 547.
46 B/R 5629 A Mosher, $8174.70."

360 Q. You may state if that item just referred to was carried on, and posted into the Ledger of the Marsh National Bank, and charged up to the Bills Receivable account?

A. It was carried to, and entered into the Ledger account of Bills Receivable. Ledger No. 1 of Marsh National Bank.

Q. On the debit side of that Ledger?

A. Yes sir.

Q. You may state what was the effect of that entry?

A. It indicated that a note for that amount had been placed among the Bills Receivable of the bank on that day, you will find it in the 28th line from the top of the page, in the left hand column.

Mr. THOMAS: We offer in evidence the top of page 46 of Exhibit No. 10, with the date line, also the entry appearing on line 28 from the top, left hand side of the page.

Entry offered is received and read in evidence as follows: (Exhibit No. 1006).

46	Bills Receivable Account. 1884.	
May 27th,	$547	$8174.70

Q. Referring again to Bills Receivable of Donnell Lawson & Simpson taken into the bank after May 1884, I will ask you
361 to state when it is you find the first note of that description entered into the assets of the bank?

A. Journal 9 of the Capital National Bank, Exhibit No. 2, page 231 under date of Monday October 14th, 1884, the first and second lines from the top of the page.

Q. You may state what items appear there?

A. B/R. Two notes of Donnell, Lawson & Simpson.

Mr. THOMAS: We offer in evidence the following portion of page 231 of Exhibit No. 2, being Journal "A" of the Capital Na-
362 tional Bank, also the head of the page "Tuesday October 14th, 1884, and the entries appearing on the first and second lines from the top.

The entry offered is received and read in evidence being as follows:

(EXHIBIT No. 1007.)

TUESDAY, *October* 14, 1884. 231.

33 B/R 6841	A. Donnell Lawson & S.	.....	5048.76
" " 6842 ".	"	.....	4695.79."

Q. I will ask you to state if these items and entries were posted and transferred to the Ledger of the Capital National Bank?

Mr. DEWEESE: Are they a charge or a credit?

A. They are a charge to Bills Receivable Yes sir they were entered in to the ledger account of Bills Receivable on ledger "A" of the Capital National Bank at page 33, on the left hand side at lines 24 and 25 from the top.

Q. Is that the book identified by the Notary Mr. Ricketts, and by the court reporter as Exhibit No. 11?

A. Yes sir.

363 Mr. THOMAS: We offer in evidence the entries appearing on lines 24 and 25 in the left half of page 33 of Exhibit No. 11, being the Ledger "A" of the Capital National Bank, also the top of the page, the page number and the date.

Entry offered is received and read in evidence, as follows, being Exhibit No. 1008.

Bills Receivable. 33.

Oct. 14th,	231	5084.76
"	"	4695.79"

Q. You may state what those entries indicate and what is their effect?

364 A. They are a charge to the Bills Receivable account, and indicate that notes for those amounts were placed among the Bills Receivable of the bank on that day.

Q. I will ask you if you find notes of the firm of Donnell, Lawson & Simpson taken into the bank, the Capital National Bank on July 20th, 1885?

A. July 20th, 1885 in Journal 9, Capital National Bank, page 705, on the 7th line from the top of the page.

Mr. THOMAS: We offer in evidence the entry appearing on the 7th line from the top of page 705, of this Journal also the top of the page, and the entry thereon.

365 The entry offered is received and read in evidence, as follows, being numbered Exhibit 1009.

MONDAY, *July* 20, '85. 705.

77 B/R. 9133 @ D. L. & Simpson..... 9391.57

Q. You may state Mr. Whitemore what is indicated by the letters "B-R" that appear on this page of the Journal, if you know.

A. They are used as an abbreviation for Bills Receivable.

366 Q. You may state if those items just referred to are transferred or posted to the Ledger of the Capital National Bank?

A. It was.

Q. To what book and page?

A. Ledger "A" Capital National Bank, page 77.

Q. In the account of Bills Receivable?

A. In the account of Bills Receivable, in the upper half of the space between the 5th and 6th lines from the bottom of the left hand side of the page.

Mr. THOMAS: We now offer in evidence the entry just referred to by the witness reading as follows,—also the writing on the top of the page as follows,—"Bills Receivable," page 77.

Received and read in evidence as follows; (Ex. 1010)

77

Bills Receivable.

1885.		
July 20.	705	9391.57.

Q. Now you may state what that entry indicates, and what is its effect upon the bank?

367 A. It indicates a charge to Bills Receivable of that amount and shows that a note of that amount was placed among the Bills Receivable of the bank on that day.

Q. I will ask you to state if you have examined to ascertain if a note of Donnell, Lawson & Simpsons was taken by this bank on July 24th 1885?

A. Yes sir, Journal "A" Capital National Bank, page 713, the 5th line from the top of the page.

Mr. THOMAS: We offer in evidence the entry appearing on line just referred to by the witness, also the writing at the top of the page, "Friday July 24th, 1885."

368 The entry offered is received and read in evidence as follows, being marked Exhibit No. 1011.

FRIDAY, *July 24th*, 1885. 713.

78 B/R 9157 @ Donnell L. & S..... 9391.56"

Q. You may state Mr. Whitmore if you find that this entry has been transferred or posted to a ledger of the Capital National Bank, and if so where.

A. Yes sir, on ledger "A" of the Capital National Bank, Bills Receivable account, page 78, the 21st line from the top of the page in the left hand column.

Mr. THOMAS: We offer in evidence the entry contained on the line indicated by the witness, also the writing contained on the top of the page, and the entry.

369 The entry offered is received and read in evidence as follows, being marked Exhibit No. 1012.—

78. Bills Receivable.

1885.		
July 24.	713	9391.56

Q. You may state what that entry indicates, and what its effect is, and what transaction it reflects.

A. It shows a charge to Bills Receivable in that amount, and indicates that a note of that amount was placed among the Bills Receivable of the bank on that day.

Q. You may state if you find a note of Donnell, Lawson & Simpson was taken into the Capital National Bank on August 13th, 1885.

370 A. I find two notes taken.

Q. Where do the entries indicating that appear?

A. The first entry appears on the 9th line from the bottom of page 745, Journal A of the Capital National Bank.

Q. And the other one appears?

A. The second appears on the 8th line from the bottom of the same page.

Mr. THOMAS: We offer in evidence the entries appearing on the 8th and 9th lines from the bottom of the page referred to by the

witness, also the writing appearing on the top of the page as follows:—"Friday August 13th, 1885.

The entry offered is received and read in evidence being as follows, and marked exhibit No. 1013.

"FRIDAY, *August* 13", 1885. 745.

81 B/R 9356 @ Donnell, L. & S..... 10200.
" 7 " do. ..... 20300.00"

Q. You may state if those entries just referred to have been transferred to the ledger of the Capital National Bank, and if so to what book and page.

371 A. They have been posted to the account of Bills Receivable, Ledger 9, Capital National Bank, page 81 between the 23rd and 24th lines from the top, both appearing in the space on the left hand side of that page.

Mr. THOMAS: We offer in evidence the entries just referred to by the witness also the following appearing on the top of this page,—"Bills Receivable."

The entry offered is received and read in evidence as follows,—being marked Exhibit No. 1014.—

1885.	Bills Receivable.	81.
Aug. 13,	745	10200.00
"	"	20300.00

Q. You may state what transaction these entries indicate or reflect?

A. They show a charge to Bills Receivable of these amounts, and that notes for these amounts were placed among the Bills Receivable of the bank on that day.

* * * * * * *

372 Q. Calling your attention to the first books of the Marsh National Bank I will ask you to state if you have examined the Journal and Ledger so that you are able to state how those books were opened?

A. I have.

Q. You may state in a general way how that was done, what entries were made.

373 A. The balances as shown by the ledger of Marsh Bros. Mosher & Co., were transferred to the new ledger opened for the Marsh National Bank.

Q. Was a new set of books opened up in the same manner as would be done if a new bank were organized?

A. No sir.

Q. In what way did it differ?

Q. In the ledger, the first ledger of the Marsh National Bank, wherein the different accounts are opened up, you may state

374 if you have examined the Journal of the Marsh National Bank of the corresponding date to ascertain whether this

journal contains entries which open up the ledger of the Marsh National Bank?

A. No sir, It does not contain entries opening up the books of the Marsh National Bank.

Q. What are the first entries that appear on the journal of the Marsh National Bank, I mean in a general way?

A. In a general way they are a continuation of the business of Marsh Bros. Mosher & Co.

Q. And do they contain anything else other than the current business of that day?

375 A. No sir.

* * * * * * *

Q. Now I will ask you if you have examined the account transferred from the ledger of Marsh Bros. Mosher & Co., to the Marsh National Bank known as "Collection account?"

A. Yes sir.

Q. Was such an account transferred from the ledger of Marsh Bros. Mosher & Co., to the ledger of the Marsh National Bank, at the commencement of business of the Marsh National Bank?

376–378 A. Yes sir.

* * * * * * *

379 Mr. THOMAS: We also offer in evidence the top of the page, of page 617 of Exhibit No. 10, and the entry on the first line on the left half of the page.

The entry offered is received and read in evidence as follows, the same being marked Exhibit No. 1016.

	Collection %, Marsh Bros. Mosher & Co.		617.
1883.			
July 2nd.	Balance,—	488.	14573.32.

Q. Does the entry just introduced in evidence appearing on the top of page 617 as follows "July 2nd, Balance 488, $14573.32 appear in red ink?

A. It does.

Q. You may state what is indicated by this entry appearing as it does on this ledger of the Marsh National Bank.

A. It indicated that the Marsh National Bank considered that they had an asset of 14,573.32 in Collection Account, but the account being in red ink would indicate that it was overdrawn and that they had paid out more to that amount than they had received in that account.

* * * * * * *

380 & 381 Q. Can a coll-ction Account if properly kept, be overdrawn?

A. No sir, it cannot.

* * * * * * *

382 A. The balance of the Omaha National Bank for July 2nd, 1883 is $10,000.00 more than the balance, that is

$10,000.00 more on the General Balance book than is shown on the ledger account of the Omaha National Bank for the same date,—
that is, this General Balance book shows $10,000.00 more
383 due from the Omaha National Bank than the ledger shows due from the Omaha National Bank.

Q. In other words you mean to state that the collection account by erasure is made $10,000.00 less, and the Omaha National Bank account by erasure and change of figure is made $10,000. greater, thereby maintaining the balance of the books?

A. No sir.

Q. What do you mean?

384 A. I mean that by erasure of the figure "1" $10,000.00 was taken from the balance in the Collection account on the General Balance book and by the addition of the fig. "1" the balance on the General Balance Book due from the Omaha National Bank was increased $10,000.00.

Q. I will ask you to examine the Journal of the bank,——

COURT: Were they both upon the same side of the Ledger?

A. Yes sir.

Q. I will ask you to examine the Journal of this corresponding dates, and will ask you to state if there are any entries upon the Journal to justify or authorize these changes in amounts as they appear upon the balance book?

A. No, there are none.

* * * * * * *

385 Q. I will ask you to state Mr. Whitmore if prior to December 14th 1885 there was carried on the books of the
386 Capital National Bank as an asset, an account known as Bills of Exchange?

A. Yes there was prior to December 1885, and in December 1885 there was an account in the Capital National Bank known as "Bills of Exchange Account."

Q. Upon that date, that is December 14th, 1885, you may state if you find a credit to that account amounting to the sum of $29,968.00.

A. I find no credit for that amount.

Q. What do you find?

A. I find a debit to the account of that amount.

Q. That is a charge to that account?

A. Yes sir.

Q. Where does that appear on the Journal of the Capital National Bank, Exhibit No. 3?

A. It appears on Journal B of the Capital National Bank, page 205, on the 21st line from the bottom of the page.

Mr. THOMAS: We offer in evidence the entries appearing on the 20th and 21st lines from the bottom of the page referred to by the witness, also the entry at the top of the page, as follows.

387 The entry offered is received and read in evidence as follows,—being marked Exhibit 1017,—

"Monday Dec. 14/85. 205.

123 Bills of Exchange..... 29968.00
123 ..... 6722.20 36690.20

Q. Were those items posted to the ledger of the Capital National Bank, and if so to what book and page?

A. Ledger "A" of the Capital National Bank, page 123, account Bills of Exchange, on the 3rd line from the top of the page, in the left hand side of the page.

Mr. THOMAS: We offer in evidence the entry contained on the line just indicated by the witness, marked Exhibit 1018, also the heading at the top of the page.

388 The entry offered is received and read in evidence as follows,—

1885.	Bills of Exchange.	123.
Dec. 14.	205	36690.20

Q. You may state what that entry indicates, what sort of a transaction?

A. It indicates that a total of that amount was added to the Bills of Exchange account on that day.

Q. Now you may state Mr. Whitmore, if upon that same day, to-wit, December 14th, 1885 Bills Receivable, or notes of the Marshes were taken out of the bank, as disclosed by the books of the bank, and if so, how much?

389 A. The journal shows that notes indicated by numbers and the word "Marsh," were apparently paid on that day.

Q. I will ask you where that appears on the journal if anywhere?

A. Commencing on the 7th line from the top of page 204, of Journal B of the Capital National Bank, under date of Monday December 14th 1885, and continuing for 9 lines or entries

390 Mr. THOMAS: We now offer in evidence the entries appearing on lines No. 7-8-9-10-11-12-13-14 and 15 beginning at the top of the page, page 204 of Journal B of the Capital National Bank, identified as exhibit No. 3, also that portion at the top of the page, Monday December 14/85.

The entries offered received and read in evidence as follows,—being numbered Exhibit No. 1019.—

204	Monday Dec. 14/85.	
108, B/R	10418 @ Marsh	4868.00
	10461 " "	5000.00
	10475 " "	2500.00
	10502 " "	2500.00
	10511 " "	5000.00
	10519 " "	3600.00
	10525 " "	2000.00
	10527 " "	2000.00
	10529 " "	2500.00

391 Q. I will ask you Mr. Whitmore what is indicated by the numbers which appear in these entries commencing at No. 10418 and appearing further on down?

A. The numbers of the notes on the Discount Register of the Capital National Bank.

Q. What is the total footing of those notes, which have been introduced in evidence, as shown by the entries just offered.

Q. What is the total amount of the footing of the items just introduced in evidence, under the heading of Bills Receivable "Marsh"?

392–399 A. $29,968.

Q. Mr. Whitmore is that the same amount as the item that is charged to Bills of Exchange on this same day?

A. Yes sir, the same amount as one of the items charged to Bills of Exchange on this day.

Q. You may state what this entry making a charge against Bills of Exchange, and Credit to Bills Receivable of the same amount, on account of these Marsh notes, indicates?

A. I will have to answer that question as two questions. The entries showing payment of these notes called Marsh notes show that the Bills Receivable of the bank were reduced $29,968.00 on that day. The charge of $29,968.00 to the Bills of Exchange account shows that the Bills of Exchange account was increased that day that amount, and that there was due the bank from that account $29,968.00 more than had been the previous day we will say, if there had been no credit to the account.

COURT: Have you made examination to see if the records indicate that these notes were paid in money or renewed on that day or at that time?

A. The Journal does not indicate that any renewal notes were taken on that day for those notes.

* * * * * * *

400 Q. Now Mr. Whitmore I will ask you to examine the journal of the Capital National Bank under date of July 20th, 1886, and state if you find any entries upon that book indicating that Bills Receivable were taken into the bank on that day.

A. I do

* * * * * * *

401 Q. Have you made an investigation and are you able to state the items of Bills Receivable that comprised this total of $46,836.56?

A. I haven't been able to determine exactly the notes that make up that $46,836.00 but I have made it within a few dollars.

Q. You may state if you have found, notes or Bills Receivable that went into the bank that day that aggregated within a few dollars of the sum of $46,836.56.

402 & 403 A. Yes sir.

* * * * * * *

404 Q. Now you say you have been able to find from the Discount Register referred to what notes comprised those items of $46,836.56?

A. Yes sir, I have.

Q. Have you prepared a schedule giving each note and the amount thereof, as shown by the Discount Register of the bank?

A. Yes sir.

Q. Handing you Exhibit No. 1020 you may state if that is the schedule to which you refer?

A. It is.

* * * * * * *

405 Q. Does that schedule and the amount referred to include a note purported to have been executed by F. S. Johnson & Co., being for the sum of $9968.00?

A. It does.

Q. Does it include a note for the sum of $10,000.00 purporting to have been signed by the First National Bank of Hastings?

A. It does.

Q. Does it include a note for the sum of $10,000.00 purporting to have been signed by the First National Bank of Kearney?

406–431 A. It does.

* * * * * * *

432 Q. I will ask you Mr. Whitmore if in the ledger which has been referred to as the ledger of Marsh Bros. Mosher & Co., there was an account known as Stock & Bond account?

A. Yes sir, there was such an account.

Q. On page 639 of the ledger referred to?

A. Page 639 of ledger 1, Marsh Bros. Mosher & Co.

Q. What is the total amount of Stocks & Bonds shown on hand by the Ledger of Marsh Bros. Mosher & Co.?

433 A. $30,540.

Q. When this account of Stocks & Bonds appears on the ledger of the Marsh National Bank, for what amount is the balance carried over?

A. Carried over as $540.00.

Q. I will ask you to state Mr. Whitmore upon an examination of the books of Marsh Bros. Mosher & Co., and the opening of the books of the Marsh National Bank, what you find with reference to the transferring of the account of Stocks & Bonds and for Bills Receivable, state fully to the jury.

434 A. I find that the Stocks & Bonds account of Marsh Bros. & Mosher & Co., was $30,540.00 and that it appears on the books of the Marsh National Bank as $540.00, and the books of the Marsh National Bank show that there have been erasures of two figures in the account, which would reduce it from something in the tens of thousands down to $540.00.

I find that Bills Receivable of Marsh Bros. Mosher & Co., of $248,029.33, that appear on the books of the Marsh National as $278,029.33, a difference of $30,000.00. And that there appears to have been an erasure in the figures to make this amount, the "4" having been erased and a "7" substituted.

435 Q. I believe you stated in your testimony yesterday that there are no entries in the commencement of the journal of

the Marsh National Bank which carried the balances on the Marsh National Bank ledger, but that they are transferred directly from the ledger of Marsh Bros. Mosher & Co., to the Marsh National Bank, is that correct?

A. Yes sir.

Q. Handing you Exhibit No. 18, you may state what that book is.

A. General Balance Book of the Marsh National Bank.

Q. Is that the same book concerning which you testified yesterday.

A. Yes sir.

Q. You may state if you can tell from that book if there have been any erasures in the figures opposite the account of Stocks & Bonds, and in the account opposite the letters "B/R" which indicat- Bills Receivable.

436 A. Yes sir, there are.

Q. For how many days do these changes appear?

A. They continue for every business day from the 2nd of July 1883 to and including the 27th day of July 1883.

Q. I will ask you if you can tell from any of the erasures what the figures were before they were erased.

A. On the Stocks & Bonds account, Tuesday July 24th, 1883, the figure "3" appears to have been partially erased,, changing it from $30,000.00 to——

Q. How much difference does it make in that account?

A. It makes a difference of $30,000.00.

Q. What change has been made in the Bills Receivable account?

437 A. Changes in the figures from Monday July 2nd, 1883 to and including July 27th, 1883.

Q. How have those changes affected that account?

A. It makes a difference of $30,000.00, increased the Bills Receivable by that amount.

Q. You may state from your knowledge as a bookkeeper and an accountant, when in your opinion these changes were

438–441 made.

A. They were made on or about the 27th day of July 1883.

Mr. DEWEESE: That would be indicated by the fact that the changes when they commenced continued up to that date, upon the different entries, that apparently had been made?

A. Yes sir.

Mr. DEWEESE: The result simply was to cut out the $30,000.00 for the time it had been entered in those new books?

A. Yes sir.

Q. What was the effect upon the account of Stocks & Bonds, as indicated by the books of the Marsh National Bank?

A. It reduced the amount of stocks and bonds held by the bank, and increased the Bills Receivable apparently held by the bank.

Mr. DEWEESE: In the same amount?

A. Yes sir, in the same amount.

* * * * * * *

442 Q. Could an entry or a transaction be properly put on the ledger, that did not appear on the Cash Journal for the corresponding date?

A. There should be some record of it upon the Journal for that day.

Q. Now I will ask you to examine the Cash Journal of the Marsh National Bank for the month of July 1883, and state if there are any entries on that Journal during the month that would authorize or justify the increase of the Bills Receivable account as shown by the General Balance book and the ledger from 248029.33 to 278029.33, to *to* authorize the changes in that Bills Receivable account from the dates July 2nd to July 27th inclusive in the sum of $30,000.00.

A. I haven't look- up that matter, and if you want to go on with something else, I can look it up later when court is adjourned.

Q. I will ask you to state if from your examination of the books and from your knowledge as an expert accountant, whether in your opinion the increase of the Bills Receivable account in this amount of $30,000.00 was a genuine transaction of the bank, if such Bills Receivable actually went into the bank as shown by its books.

443 A. I should say that no Bills Receivable for the amount of $30,000.00 went into the bank on that day on the 2nd of July.

* * * * * * *

444 Q. I will ask you if you have examined the books of Marsh Bros. Mosher & Co., referring to their ledger, and can state what it*mes* comprised this $30,000.00 stocks & Bonds which appeared as the balance on the ledger of the Marsh Bros. Mosher & Co., at the time it was transformed into the Marsh National Bank.

A. I can as to $30,000.00 of the items, I think.

Q. Have you examined that book to ascertain what items comprised this $30,000.00 of the Stocks & Bonds account, prior to the time that account was transferred to the ledger of the Marsh National Bank, and as it was at that time transferred?

A. First I want to modify the amount in the preceding answer, I think I said $30,000.00, it should be $22,500.00.

Q. Have you examined that book to ascertain what items comprised this $30,000.00 of the Stocks & Bonds account, prior to the time that account was transferred to the ledger of the Marsh National Bank, and as it was at that time transferred to that bank?

445 A. Yes sir.

Q. When did those items enter upon the books and become a part of the assets of the firm of Marsh Bros. Mosher & Co.

A. January 6th, 1882—$7500. April 1st, 1882, $7500. July 24th, 1882—$7500.00 and December 29th, 1882, $7500.00.

Q. The four comprising $30,000.00?

A. Yes sir.

Q. Now you may state what those items consist of, what they are.

A. As to the first I am unable to determine from the books. As

to the items of April 21st, 1882, that is derived from a credit to the account of Marsh Binder Manufacturing Company and as to the amount of July 24th, 1882 that is derived from the account of the Marsh Harvester Company, this account is Cr. As to the item of December 29th, 1882 $7500.00 that is derived from a credit to the account of the Marsh Harvester Company.

Q. Is there anything on the books to indicate where that first item of $7500.00 came from?

A. No sir, nothing that I can find.

Q. What book of Marsh Bros. and Mosher did you have access to to determine the three that you have testified to?

A. Ledger No. 1 of Marsh Bros. Mosher & Co.

—. Have you the Journal of Marsh Bros., Mosher & Co., that was kept during the life of that ledger?

446–452 A. No, I think that is not here.

Q. Have you ever found it?

A. We never have been able to, at least I have never seen that Journal.

Q. Have you made search for it among the books of the Capital National Bank, while they were in the hands of the Receiver Mr. McDowell for this particular journal?

A. Yes sir.

Q. And have been unable to find it?

A. Yes sir.

COURT: And that is the reason you couldn't state what that first $7500.00 is?

A. One might find it if he had that Journal.

Q. You couldn't determine that because you couldn't find that book, you don't know whether that would disclose it or not?

A. I couldn't determine it from the books I have here to my own satisfaction.

* * * * * * *

453 Q. Now what was done with the expense account, such as "wages paid" "taxes" and interest paid, how were those treated in closing up at the dividend period?

A. Well the same practice was followed with reference to the balances in these several accounts. They were credited, the balance in a particular account, and charged it to undivided profits.

Q. In other words in closing, or charging out, for instance the item of "interest paid" they would credit that account with the amount of it at that date, and charge that amount against the undivided profits?

A. No they did not do that in every case.

Q. I mean is that the proper way in which it should be done.

454–456 A. Ordinarily that is the way it should be done.

Q. Was that done with reference to the account of "wages" or salaries?

A. Yes sir, in most cases it was done.

Q. Now referring to the account known as "interest paid" you

stated that in all instances when that account was closed out, the amount of it wasn't always charged to the undivided profit account, is that correct?

A. The credits to interest paid were not always charged to the undivided profit account.

Q. In what instances was that not done?

A. Well in numerous instances, I have a list of them here.

Q. You may state giving the date and the amount of credits made to the "interest paid" account, that were not charged to the undivided profit account.

* * * * * * *

457 Q. What is the total of these credits to the "interest paid" account, that were not charged to the undivided profit account?

458 A. The total of the amounts I have given is $115,916.44.

Q. Now you may state Mr. Whitmore what was the effect of those entries on the condition of the bank as shown by its books.

A. They reduced the amount of the expenses of the bank.

Q. You mean to state that they reduced the amount of the expenses, or reduced the apparent amount of the expenses?

A. Well they reduced the amount that had been expended in payment of interest.

Q. Could, or can a credit entry to the "interest paid" account be properly made, that is not charged against the undivided profit account?

459 A. Well if by undivided profit account you mean the earnings of the bank, it could not be.

* * * * * * *

Q. Would it decrease the apparent expenses of the bank, and consequently increase the apparent profits of the bank so as to leave and apparent net profit upon which a dividend might be declared?

460 & 461 A. It would when they come to make up a statement of the expenses and earnings of the bank for a given period say for a half year or a year. If they have merely put in the balance remaining in the interest paid account, why of course they wouldn't show a truth, it wouldn't be a true statement of the interest they had paid during the period.

Q. It would understate the true amount of interest actually paid to the extent of the amount of this credit which wasn't charged against the undivided profits.

A. Yes sir.

* * * * * * *

462 Q. You have made an examination of the books, and from them prepared a schedule showing the amounts of dividends paid by the Capital National Bank since that time, and the amount credited to surplus?

A. I have.

Q. Now I will ask you to state, if you know, the amounts of

dividends declared and paid by the Capital National Bank, and also credited to surplus account from January 1st, 1885 to the time of its failure giving the book and page where those amounts may be found and verified.

A. I have no schedule giving the book and page of the dividends, but I have a schedule showing the several amounts paid, and the time of their payments, but as to the book and page they kept no dividend account, so there is no book and page. It is to be arrived at from the record of the proceedings of the directors' meetings, and from the charges to the undivided profit account.

Q. On the Journal?

A. On the Journal and ledger.

Q. Have you a schedule showing the page of the journal or ledger with reference particularly,——

A. I have the ledger account of undivided profits, showing the charges of the dividends to the account. I can give the ledger and page from that of each one of these, of the surplus also.

Q. You may answer the question then as propounded.

463 A. Dividends January 12th, 1885, Ledger A, page 798, these ledger pages refer to the "Undivided profit" account.

15000.

that is the total dividend, there are two amounts making a total of $15,000.00.

July	3, 85	Ledger	A,	Page 798.....	13000.
Dec.	31 85	Ledger	"A"	Page 798.....	16000.
June	30 86	Ledger	A	Page 798.....	14000.
Dec.	31 86	Ledger	B	Page 25.....	18000.
July	1 87	Ledger	B	Page 25.....	18000.
Jan.	3 88	Ledger	C	Page 465.....	18000.
July	11 88	Ledger	C	Page 465.....	18000.
Jan.	9 89	Ledger	7	Page 435.....	18000.
July	10 89	Ledger	C	Page 465.....	18000.

That date may be on one book July 11th, and on another book it may be July 10. There is a difference in the date and I have forgotten which book the difference appears in,—I think the ledger gives a different date.

The next is—

464

Jan.	15 90	Ledger	7	Page 435.....	15000.
July	9 90	Ledger	7	Page 435.....	15000.
Jan.	15 91	Ledger	8	Page 555.....	15000.
July	1 91	Ledger	8	Page 555.....	250.
July	9 91	Ledger	8	Page 555.....	1000.
July	17 91	Ledger	8	Page 555.....	13750.

Making a total of $15000., the dividend declared by the record book was $15,000.00 but it seems to have been paid at three different times, and it is charged off on three different dates, and charged to the undivided profit account.

Jan. 13 92 Ledger 9 Page 631 ..... 15000.
July 14 92 Ledger 9 Page 631 ..... 12000.

Total dividends $253,000.00

Q. Does that include the surplus?
A. No sir.

* * * * * * *

465 (By Mr. THOMAS:)

Q. Now you may state Mr. Whitmore if you have examined some of the certificates of deposit which were issued by the Capital National Bank while it was doing business, and have compared them with the books and records of the bank?

A. I have.

Q. I will ask you if you have among others examined certificates of deposit attached to the depositions read in evidence, and identified as Exhibits No. from 109 to 146 inclusive, identified by the Notary Mr. Rickstts as such and attached to the depositions of McDonald, Outcalt, Hale and others?

A. I haven't examined those, you will have to let me have the certificates of deposit because I haven't had an opportunity to examine the numbers.

466 (Counsel passes depositions and exhibits to Witness.)

Q. Have you since your last answer examined the certificates so as to verify the numbers on them, with the written statement you have before you?

A. Yes sir, I have examined the certificates attached to that deposition, and have checked them off on the list I have before me, of certificates which I have examined and compared with the record.

Q. I will ask you if you have examined certificate of the Capital National Bank numbered 21379?

A. Yes sir.

Q. You may state for what amount the original certificate purports to have been issued for.

A. The stub amount & the certificate amount are for $50,000.00.

Q. You may state if the Capital National Bank kept a book upon which it registered the certificates of deposit, that were issued by the bank.

A. It did.

Q. What was that book known as?

A. Certificate of Deposit Register.

Q. Did you compare the certificate to which you now refer, or may hereafter refer to the entry of the same certificate upon the Certificate Register?

A. Yes sir.

Q. Now you may state for what amount this certificate No. 21379 for $50,000.00 was carried on the Certificate Register.

467 A. $100.00.

Q. Are Exhibits No. 33 and 34 which I now hand you

the Certificate of Deposit register to which you have testified, of the Capital National Bank?

A. Yes sir.

Q. Now you may state to the jury in a general way what that book contained, and how it was kept.

A. It gives the date of the deposit, the name of the depositor, the number of the Certificate, the amount of the Certificate, the total amount for the day, and the date when the Certificate was paid, and the person to whom the Certificate was payable. That is where such entries were made,—There is a column for that, and shows the consecutive number of the certificate for convenience in finding the certificate and identifying it with the stub.

Q. Does each certificate of deposit issued by the bank bear a number, and are the numbers consecutive?

A. The numbers are consecutive in each stub book, whether the numbers were consecutive all through the Register, I don't know because one register is gone.

Q. The numbers in the Registers which you have been able to find are consecutive?

A. I think the numbers are consecutive.

Q. Does each certificate of deposit contain a printed number, and does that number correspond with the printed number on the stub, the book from which the certificate of deposit is taken?

A. Yes sir.

468 Q. That is the certificate of deposit is originally in a book, Exhibit No. 926 which I now hand you?

A. The certificates were printed in blank on a certain form, and they were so manufactured that the certificate itself could be torn out of the book, and a stub remain, similar to the stubs in a check book, and the certificate and the stub were each made with a printed number, the numbers being the same on the certificate and on the stub.

Q. Then a certificate of a certain number has been detached from the stub of the corresponding number?

A. Yes sir.

Q. And the stub of that number indicates a description of the certificate that was issued and detached from that particular stub.

A. Yes sir.

Q. And what information does the stub give?

A. It gives the amount of the certificate, and the date it bore, and the person to whose order it is payable, and the number, and there were blanks for other information, such as the name of the applicant, and the rate of interest, a sub-stub for the rate of interest which was to go with the certificate, if the certificate was an interest bearing certificate then a little more of the stub was torn off than if the certificate did not draw interest. By an examination of some of the certificates in that deposition you will find that some of them are longer than others, owing to their bearing interest. And when it issued it was entered upon the Certificate Register under the number that the certificate bore.

Q. This certificate No. 21397 issued to J. E. Hill Tr., to which

you have just testified, you say this was entered upon the certificate register as what amount?

469 A. It appears upon the register as $100.00.

Q. That is, the certificate appears upon the register as having been issued for $100.00?

A. Yes sir.

Q. When in fact it was issued for $50,000.00.

A. The certificate itself shows it was issued for $50,000.00.

Q. Does that certificate show that it was presented to the bank and paid by the bank?

470 A. It bears a stamp, a "paid" stamp of the Capital National Bank, January 6", 1893 apparently.

Q. Can you tell from the certificate how much the bank paid when that was cancelled?

A. No sir.

Q. Have you examined the books of the bank to ascertain what amount the bank paid out on that certificate at the time it was presented to the bank and cancelled?

A. I think I can.

Q. You may state.

A. The ledger of that bank on January 6th 1893 shows that a certificate for $50,000.00 was paid on this day, but the number of the certificate is not given on the Ledger. Further than that I could not identify this particular certificate as being the one which was paid on that day, the ledger merely shows a certificate for $50,000.00 was paid on that day.

COURT: Do they come from the Journal, the entry of these?

A. The amount of certificates paid on each day was included in the total checks for the day. The certificate account was kept on the Deposit Ledger, Depositor's Balance Book No. 2, and the total of Certificates was included in the total of checks, and then that total went onto the Journal, and it is only by making a footing of the checks for the day, and seeing if that amount agrees with the amount on the Journal that you can tell, presumably it did.

Q. Have you been able to find any other certificates of deposit of that amount that was paid on that day?

A. Well I have made no search for another certificate of $50,000.00 which had been issued by the bank and paid on that day.

Q. I will ask you if the certificate of deposit register in-

471 dicates that that certificate is paid.

A. Yes sir.

Q. Upon what day does that show it was paid?

A. 4/24/91.

Q. What does that mean?

A. April 24th, 1891.

Q. In other words the Certificate of Deposit Register shows this certificate paid April 24th, 1891, whereas the certificate itself bears the "Paid" stamp of the bank dated January 6th, 1893, and the

ledger shows $50,000.00 paid on account of Certificate of Deposit that day.

A. Yes sir.

Q. Certificate No. 23593, have you compared that certificate in the same manner as the former one you have just testified to?

A. Yes sir.

Q. What is the date of that certificate? As shown by the Certificate itself?

A. December 9th, 1890.

Q. For what amount does it purport to have been issued, as shown by the certificate?

A. $10,000.00 to J. E. Hill, State Treasurer. It was registered December 9" 1890, the name is blank on the Register. The letters "Do" being written in in ink. The amount is $100.00 and the date paid by the Register is April 24", 1891.

Q. Does the original certificate indicate that it was paid, and if so on what date?

A. It has the paid stamp of the Capital National Bank, November 3rd 1892.

Q. Have you examined the books of the bank to ascertain what amount was paid on that certificate at that time?

A. Yes sir.

Q. You may state what amount was so paid.

472 A. The ledger account shows that a certificate of $10,000.00 was paid on November 3rd, 1892.

Q. What is the next number?

A. 24471.

Q. Have you examined the Certificate No. 24471, and compared it with the books as testified to with regard to the former certificates?

A. Yes sir.

Q. What is the date of that certificate?

A. The certificate is dated April 28th, 1891.

Q. Issued to whom?

A. Issued to D. B. Welch, for $10,000.00.

Q. And to whom does the stub indicate it was issued?

A. The stub indicates "issued on account of costs."

Q. And for what amount?

A. $1.50, the Register amount. The regular order of the certificate has been changed by ink numbering. It would appear that they made a mistake in registering their certificates, and that the space on the Register for 471 was taken by 472, so that 471 does not appear at all until May 1st, under date of May 1st. And it then shows the name, and deposited by "costs" and the amount is $1.50.

Q. Does the original certificate indicate that it was presented to the bank and paid and stamped?

A. Yes sir, it was paid November 28th, 1891.

Q. You may state what amount the books show was paid for that certificate.

A. The ledger shows that a certificate for $10,000.00 was paid on this date, November 28th, 1891, and the Register shows that this certificate was paid May 13th, 1891.

Q. What is the next number?

473 A. The next is 24653.

Q. Have you examined Certificate No. 24653, and compared it with the various books of the bank, of which you have just testified?

A. Yes sir.

Q. You may state the date of that certificate, and to whom issued.

A. Stub date June 1st, 1891. Certificate date June 1st, 1891. Name on Stub, C. Hammond. Name on Certificate C Hammond. Stub amount $5,000.00. Certificate amount $5,000.00.

Q. What amount is shown on the register?

A. Register amount $100.00.

Q. Does this certificate indicate that it was presented at the bank, cancelled and paid?

A. Stamped "Paid June 20th, 1892."

Q. For what amount do the books of the bank show it was paid on that day?

A. The ledger shows a certificate for $5000.00 was paid on that day, and the Register does not show that the certificate was paid.

Q. What is the next number?

A. #24707.

Q. Have you examined Certificate No. 24707 and compared it with the books of the bank as you have testified heretofore?

A. I would suggest that I could shorten this a great deal.

Q. If you have examined any other certificates and compared them with the books of the bank as to the amount on the Register, and the date, and when paid, and the amount and so forth, you may state what the result of your comparisons and investigation is and give the dates, amounts, and other items as you have in your former answers.

474 A. #24707 Stub date shows June 10, 1891. Certificate date June 10, 1891. Name on stub John A. T. Hilds, Certificate name John A. T. Hibbs. Stub amount $3,000.00. Certificate amount $3,000.00. Register amount $300.00. Dated paid on Register June 11th, 1891. Date paid in Certificate July 8th, 1892. Date paid on Ledger July 8th, 1892.

Q. What amount was paid on that date?

A. $3000.00.

The next is #24806. Stub date June 27th, 1891. Certificate date June 27th, 1891, name on Stub Cassius S. Weese. Certificate name Cassius S. Weese. Stub amount $2,100.00. Certificate amount $2,100.00. Register amount $100. Ledger amount paid $2100.00. No date paid on Register. Date paid on Certificate June 27th, 1892. Date paid on Register June 27th, 1892. The name on register was the same as the certificate.

The next is #24866. Stub date July 8th, 1891. Certificate Date July 8th, 1891. Name on Stub A. Humphrey. Certificate name Austin Humphrey. Stub amount $4500.00. Certificate amount $4500.00. The Register amount is $500.00. Ledger amount paid $4500.00. Date paid on Ledger October 13th, 1891. Same on certificate, October 13th, 1891.

No. 24937.

Stub date July 18th, 1891. Certificate date July 18th, 1891. Name on Stub J. E. Hill, Treas. Certificate name J. E. Hill, Treas. Stub amount $14650.00. Certificate amount $14650.00. Register
475 amount $4650.00. Amount paid on Ledger $14650.00. Date paid on Register August 6th, 1891. Date paid on Certificate August 6th, 1891. Same on Ledger. Name on Register "Collections." That one wasn't signed by Mosher or any one for the bank apparently.

The next is No. 24911.

Stub date July 20th, 1891. Certificate date July 20, 1891. Name on Stub, J. E. Hill, State Treas. Certificate name, J. E. Hill, State Treas. Stub amount $10,000.00. Certificate amount $10,000.00. Register amount $5,000.00. Ledger amount paid $10,000.00. Date paid on Register August 6th, 1891. Same on certificate and Ledger, and the name on the register is deposited by "do," being immediately under the word "collections" written on the line above.

No. 24981.

Stub date July 27th, 1891. Certificate date July 27th, 1891. Name on stub A. P. S. Stuart. Certificate name A. P. S. Stuart. Stub amount $20.00. Certificate amount $2000.00. Register amount $20.00. Ledger amount $2,000.00. Date paid on Register, January 27th, 1892. Same on Certificate and Ledger. Names on Register A. P. S. Stuart.

No. 24986.

Date on stub, July 27th, 1891. Certificate date the same. Name on stub H. R. King. Certificate name H. R. King. Stub amount $1000.00. Certificate amount $7000.00. Register amount $1000.00. Date paid on Register August 7th, 1891.

I am unable to verify the date of the payment of this certificate for the reason that the stamp which has been put on here had too much ink on it and it is blurred, so that I cannot make out the month, but the the month appears to be August but the day of the month and the year I cannot tell, so that I could not tell anything about how that was paid. The ledger don't give the numbers of the certificates. This register gives the date of payment as August 7th, 1891.

476 Mr. DEWEESE: Does it give the amount?

A. There is a column here for showing the day of payment of each certificate, but it don't give the amount paid. You see if I knew the date there, the stamp date then I could verify it, I could look on the register of that date, and see if it was paid.

Mr. DEWEESE: What does the ledger show.

A. I couldn't state now. No I couldn't tell as to that one, on the ledger. I left that part of it blank here on my schedule. The name on the register is H. R. King.

The next is # 25047.

Stub date gives August 6th, 1891. Certificate date August 6th 1891. Name on Stub, J. E. Hill, Tr. Name on certificate the same. Stub amount $975.00. Certificate amount $37975.00. Register amount 975.00. Amount paid by the Ledger $37,975.00. Date of

payment on Register August 14th, 1891. Date paid on certificate, December 13th, 1892. Name on Register "Collections." Date paid on Ledger, December 13th, 1892. The next is No. 25056. Stub date August 8th, 1891. Certificate date August 8th, 1891. Name on stub Harper notes. Name on certificate, the same. Stub amount $1000.00. Certificate amount $7000.00. Register amount $1000.00. Date paid on Register August 14th, 1891. Date paid on Certificate Oct. 2nd, 1891. Issued on account of collections. Name on Register "collections. The Ledger payment and the amount of the payment I have not verified.

The next is # 25097.

Stub date August 17th, 1891. Certificate date August 17th, 1891. Name on Stub, J. E. Hill, Tr. Certificate name J. E. Hill, Tr. Stub amount $50.000. Certificate amount $50,000.00. Register amount $50.00. Ledger amount paid $50,000.00. Date paid on Register none. Date paid on certificate January 6th, 1893. The name on Register "Collections." Date paid on Ledger January 6th, 1893.

477 Q. Shown issued to whom by the register?

A. There are *tow* certificates of $50,000.00 that appear to have been paid on January 6th, 1893.

Q. Does the register indicate to whom that was issued?

A. I gave that "collections."

The next is No. 25380.

Stub date October 3rd 1891. Certificate date October 3rd, 1891. Name on stub Hattie E. Carson. Certificate name Hattie E. Carson. Stub amount $1100.00. Certificate amount $1100.00. Register amount $100.00. Ledger amount paid $1100.00. No date of payment on register. Date on Certificate October 3rd, 1892. Name on Register Hattie E. Carson. Date paid on Ledger October 3rd, 1892.

The next is # 25636.

Stub date November 18th, 1891. Certificate date Nov. 18th, 1891. Name on stub J. E. Hill, Tr. Certificate name J. E. Hill, Tr. Stub amount $50,000.00. Certificate amount $50,000.00. Regist- amount $100.00. Ledger amount paid $50,000.00. No date of payment on Register. Date paid on Certificate May 21st, 1892. Name on Register "Colls." Date paid on Ledger May 21st, 1892.

The next is No. 25691.

Stub date November 28th, 1891. Certificate date Nov. 28th, 1891. Stub name D. B. Welsh. Certificate name D. B. Welsh. Stub amount $10,000.00. Certificate amount $10,000.00. Register amount $100. Ledger amount paid $10,000.00. No date of payment on Register. Date on Certificate June 28th 1892. Name on Register D. B. Welsh. Date on Ledger June 28th, 1892.

The next is # 25861.

478 Stub date December 22nd, 1891. Certificate date December 22nd, 1891. Name on stub J. E. Hill, Tr. Certificate name, J. E. Hill, Tr. Stub amount $38,114.75. Certificate amount $38,114.75. Register amount $114.75. Ledger amount paid $38,-114.75. Date paid on Register December 22nd, 1892. Date paid

on certificate December 22nd, 1891. Date paid on Ledger December 22nd, 1891. Name on Register "Colls."

The next is No. 25862.

Stub date December 22nd 1891. Certificate Date December 22nd, 1891. Name on Stub J. E. Hill, Tr. Certificate name J. E. Hill, Tr. Stub amount $37,114.75. Certificate amount $37,114.75. Register amount $114.75. Ledger amount paid $37,114.75. No date of payment on the register. The stamp of payment on the certificate itself is blurred, so that I couldn't tell any more than it was during the year 1892 that it was paid, but I find on inspecting the ledger that a certificate for $37114.75 was paid on the ledger December 13th, 1892, and this stamp here has part of the figures 13 showing, so I presume the stamp was December 13th, 1892. The name on the Register is "do" being written immediately under the word "Colls."

The next number is # 25933

Stub date January 2nd, 1892. Certificate date January 2nd, 1892. Name on stub Mayer Bros. Certificate name, Mayer Bros. Stub amount $1000.00. Certificate amount $11,000.00. Register amount $1000.00. Amount paid on Ledger $11,000.00. No date of payment on register. Date paid on certificate January 3rd, 1893. Register name was Mayer Bros. and the ledger shows this certificate was paid January 4th, 1893. I think likely it came in on the 3rd at the close of business, and they stamped it as of January 3rd, and carried it over until the next morning. Those are all of the certificates which I have listed here, which show a difference in the
479 registration and the stub, or a difference between the register and the amount of the certificate itself.

Mr. DEWEESE: This last number you gave was alright was it?

A. Yes sir, that was alright.

Q. Have you also examined the certificates of deposit that were outstanding and unpaid at the time of the failure of the bank and were subsequently filed with the Receiver as a claim against the bank, and by him allowed, and compared them with the books of the bank, in the same manner as you have testified with reference to certificates of deposit in your preceding testimony?

A. I have made a comparison of certain certificates which were outstanding at the time of the failure, with the stubs of the same certificates, and the ledger, but the register of those particular certificates is not in the bank, not among the books of the bank,
480 so that I have not compared them with the register, but I have compared the certificates with the stubs and made an inspection of the ledger account with reference to those.

Q. Have you made search among the books of the bank to find that register?

A. Yes sir.

Q. Are you able to find it?

A. I am not.

Q. Now you may give a detailed history of those certificates the same as you have the ones you have just gone over.

No. 26818. Stub date May 16th, 1892. Certificate date May 16th

1892. Name on stub "Loup City Costs." Certificate name First National Bank, Poultney. Stub amount $3.00. Certificate amount $5,000.00. I find that on the ledger of that day there was a certificate for $3.00 issued, but I don't find that there was one for $5,000.00 issued. The Register is not here.

No. 27401. Stub date is August 18th, 1892. Certificate date August 13th, 1892. Name on stub is "costs." Certificate name George Olcott, Cashier. Stub amount $1.77. Certificate amount $5,000.

481 The ledger account of that day shows that a certificate for $1.77 was issued. The register is gone.

No. 27978. Stub date November 3rd, 1892. Certificate date October 31st, 1892. Stub amount "Int. Allct. Certificate name La Salle National Bank. Stub amount $3.00 Certificate amount $5,000.00 The ledger account shows that a certificate for $3.00 was issued on that day.

No. 28009. Stub date November 7th, 1892. Certificate date November 7th, 1892. Stub name "costs." Certificate name La Salle National Bank. Stub amount $3.00 Certificate amount $5,000.00 Ledger account shows a certificate for $3.00 issued on this date.

Q. I will ask you Mr. Whitmore if you have examined the books of the bank, and certain certificates of deposit, with reference to certificates of deposit that were outstanding and owing by the Capital National Bank at the time of its failure, and were filed with and allowed by the Receiver, and his certificates issued therefor, yet were shown by the books of the bank prior to its failure to have been paid?

482 A. I have made such examination as to a portion of the certificates.

Q. You may state the result of your examination, in the same manner as you did with reference to certificates of deposit testified to by you yesterday.

Q. I will ask you first, did you compare the original certificates with the books of the bank?

A. I compared the original certificates with the certificate Register, so far as the Certificate Registers were here, or was available for examination.

Q. I believe that you stated that there was one of the Certificate Registers gone.

A. Yes sir.

Q. And those you have compared relate only to the certificate, of which book of registration is here?

A. Yes sir.

Q. Now you may state the result of that investigation.

483 A. I found that Certificate Nembered 17458 issued January 9" 1888 to Effie B. Mosher for $210.00 was marked on the register as having been paid June 6th, 1889.

Q. Had the certificate been paid?

A. It was still outstanding when the bank failed.

Q. Was there any mark on the certificate indicating that it had been paid?

A. No sir.

Q. You may go on.

A. Certificate Numbered 17987 issued May 1st, 1888 to E. J. Randall for $1700.00 was marked "paid" on May 2nd, 1888, and was still outstanding when the bank failed.

Certificate No. 20292 issued June 19" 1889 to S. J. Gardner for $6000.00 was marked on the register "paid," September 26" 1889, and was still outstanding when the bank failed.

No. 23922 issued Feb. 2" 1891 to Thomas Farrell for $1015.00 was marked on the register as "paid, Feb. 21" 1891 was still outstanding when the bank failed.

No. 24541 issued May 9th, 1891 to Lydia Greenman for $371.66 was marked on the register as having been paid May 19th, 1891, and was still outstanding when the bank failed.

484 No. 24590 issued May 16th, 1891 to E. H. Allen for $641.60 was marked on the register as having been paid August 23" 1891, and was still outstanding when the bank failed.

No. 24852 issued July 6th, 1891 to N. Johnson for $1300.00 was marked on the register as paid August 3" 1891, and was still outstanding when the bank failed.

No. 24977 issued July 25th, 1891 to John A. Peterson for $250.00 is shown on the register as paid July 30", 1891, and was still outstanding when the bank failed.

No. 25003 issued July 29th, 1891 to Lydia Greenman for $230 is shown on the register as "paid" March 31, ——, and was still outstanding when the bank failed. The year is not shown it is marked "paid" 3/31—I will leave the year.

No. 25063 Issued August 10th 1891 to Thomas Farrall for $1062.12 is shown on the register as "paid September 14th, 1891" and was still outstanding when the bank failed.

No. 25129 issued August 22nd, 1891 to J. A. T. Hibbs, for $250.00 shown on the register as "paid September 21" 1891."—was still outstanding when the bank failed.

No. 25324, issued September 24th, 1891 to Samuel McClay, Receiver for $2423.97, is shown on the register as "paid September 28" 1891" and was still outstanding when the bank failed.

No. 26142 issued February 4th, 1892 to F. O. Truell for $300.00 was marked on the register as having been paid March 3" 1892,—as to that last one the register shows 3/3 as the month, and day,—and the one before it was 2/24/92 paid. It may have been intended for 3/3/92.—As to the other certificates that were outstanding, I think that the register is gone.

(COURT:)

Q. What is the footing of that?

A. I have not totaled it yet.

Q. Please do that.

A. $15954.35.

485 (COURT:)

Q. There are no entires in the Journal, or Ledger accounts that indicates anything in relation to those matters at the time of the alleged payments as shown by the register, is there?

A. I have not checked the ledger account to see if there were any of these accounts paid, I couldn't very well. I could tell by an inspection of the depositors' Daily Balance book, or Depositors' Ledger No. 2, in which they kept the Certificate accounts, whether any of these amounts were paid on this day. But as I stated yesterday there is no way of identifying certificates except by a similarity of amounts.

(COURT:)

Q. Did you examine the Daily Balance Book, as to that?

A. No sir, I have not.

Q. I will ask you if you have made an examination of the books of the Capital National Bank to ascertain the amount of money it was owing on account of Certificates of Deposit outstanding at the time of the failure of the bank?

A. Yes sir.

Q. Now I will ask you to state, did it keep more than one such account on its books?

A. Yes sir, they kept three accounts.

486 Q. How were they indicated, to separate them?

A. They were numbered 1-2 and 2, or 1-3 and 4. They had four numbers they used,—I never quite understood why they used the number "4," but the accounts would be number 1-2 & 3,—and then I think 1-3 & 4, or 2-3 & 4 when the bank closed.

Q. Did you say you made an examination of the books of the bank with reference to the certificates of deposit outstanding as shown by the bank's books?

A. Yes sir.

Q. You may state what the books of the bank show that it owed for certificates of deposit outstanding immediately prior to the suspension of the bank January 21", 1893.

A. The Depositors Daily Balance Book, No. 2, for January and February 1893, on the day of the failure of the bank showed in Certificate of Deposit account No. 4 $97301.27 of certificates of deposit issued by the bank and outstanding and unpaid at that

487 date. Certificate of Deposit account No. 3, at the same time, and in the same book showed that they had paid more certificates than had been issued in that account to the amount of $10527.46. The certificate of deposit account was overdrawn $10527.46, they had paid more certificates than they issued, apparently, by that amount. Certificate of deposit account No. 1 on the same book at the same time, showed an overdraft of $508.11, showing that they had paid more certificates than had been issued in that account by $508.11, making a total overdraft in these two accounts of $11,035.57,—that they had paid more certificates than had been issued.

Q. And if you deduct the amount of this overdraft from the amount shown in account No. 4, what does it leave as the net amount?

A. Answering the question, the net amount of course would be the difference, $86,265.70.

(JUROR:)

Q. The certificates of deposit outstanding against the bank at that time.

488 A. Yes sir, according to the Depositors' Daily Balance Book No. 2, in which the account was kept, when the bank failed.

Q. Did you examine the books of the Receiver which are here in court, so that you are able to state the amount of certificates of deposit that were actually outstanding at the time of the failure of the bank, and were subsequently filed with the receiver and allowed as a claim against the Capital National Bank, and Receiver's Certificates issued therefor?

A. Yes sir.

Q. Have you examined the original certificates, exhibits No. from 147 to 923 inclusive, being the certificates of deposit referred to in the deposition of McDonal, Young, Outcalt, Hale and compared them with the books of the Receiver, so as to verify the amounts and numbers of the certificates actually outstanding and as shown by the Receiver's books as filed and allowed?

A. I have.

Q. Are these exhibits 147 to 923 inclusive the certificates of the Capital National Bank that were identified by those witnesses, (referring to a bundle of certificates apparently)?

A. Yes sir.

Q. And you have compared them with the Receiver's books, each one separately, so that you are able to testify and know that the amount represented — these certificates has been allowed as a claim against the Capital National Bank, by the Receiver?

489 A. I have as to the certificates that are here in this package.

Q. Being the ones identified as exhibits 147 to 923 inclusive?

A. Yes sir.

Q. Have you examined those certificates so as to be able to state whether there is any mark or stamp on the certificates, indicating that they had been paid by the bank at any time prior to its failure?

A. Yes sir.

Q. Is there any "paid" stamp, or any indication on the certificate of there having been paid?

A. No sir.

Q. Now you may state Mr. Whitmore if you are able to state the total or amount of such certificates that were outstanding at the time of the failure of the bank. Have you examined the account of the Receiver and compared it with these certificates?

490 A. Yes sir.

Q. Are you able to state the total amount of certificates of

the Capital National Bank that were outstanding and unpaid at the time of its failure?

A. Yes sir.

Q. You may state the amount.

A. The total amount, as I have footed it, is $517,499.49. This includes a certificate of $150,000.00 issued to the State Treasurer, but that certificate has not been in my possession and as to that I take it from the Receiver's record.

Q. Now I will ask you to state if you have examined the certificates of deposit account, as shown on the books of the Capital National Bank with reference to any irregularities or peculiarities in the method of its keeping.

A. I have.

Q. You may state some of the irregularities you find.

491 A. On January 6" 1893 certificate of deposit account No. 4 on the Balance Ledger No. 2, showed a total of,——

(Mr. WHEEDON:) May I ask what paper you are reading from?

A. This is a memorandum,——

(Mr. WHEEDON:) In answer to the question ask- you, you are reading from some paper are you not?

A. I am refreshing my recollection.

(Mr. WHEEDON:) Are you reading from some paper?

A. No sir.

(Mr. WHEEDON:) Were you when I interrupted you?

A. No sir.

(Mr. WHEEDON:) What was the paper you held before you?

A. A memorandum made by myself.

(Mr. WHEEDON:) Will you read from it so far as you have gone so it may be put into the record?

492 (Mr. WHEDON:) You used the paper to which you refer for the purpose of refreshing your recollection?

A. Yes sir.

(Mr. WHEDON:) What is your number upon that paper?

A. Number 10.

Q. You may state some of the irregularities you find.

A. (answer continued). $15231.58 for certificates of deposit that were then outstanding and unpaid. On this day there was charged to this account a total of $106,765. of certificates paid, and none were issued, or entered as issued. That is, the bank paid out $91,533.42 more in certificates than this account showed it owed. I will state to the cou-t that these certificates that are here bearing a stamp, there is "Certificate No. 3" stamped on the corner of the certificate,—other certificates here have No. 4 stamped on, I take it that that was to indicate that the account that should be credited or charged was indicated by that number.

In certificate of Deposit Account No. 3 on January 16th, 1893 the book showed a balance of $4978.19, certificates unpaid. There were none issued that day on this account, but there was paid on this account on that day a total of $9250., or $4271.81 more than the books showed were outstanding in this account.

No certificates were issued in this account after January 16" 1893

and yet there were paid on this account on January 17th, $1750.65. On the 18" $370/00; On the 19" $795.00; On the 20th $990.00 and on the 21st, $2350. making a total of $10,527/46 that were paid more than the account showed that they had outstanding and making the overdraft in that account which I have already testified to. Now account No. 1, on January 17", 1893 was overdrawn $108.11 and on this day there was paid the sum of $400.00 which made the total overdraft on this account $508.11 being the amount
493 that I have heretofore given as the overdraft.

(Answer continued). If the court please I desire to correct one statement that I made that I think was erroneous in regard to certificate of deposit account on January 6th, 1893. I think I said that none were issued on that day. There were certificates issued on that day but there were none of the certificates issued on that day, which were apparently paid on the same day so as to go into the other side of the account.

Q. I now hand you exhibit #140 being a certificate of deposit of the Capital National Bank for $100,250.00 purporting to have been issued to J. E. Hill Treasurer, and ask you if you have compared that certificate with the books and traced it on the books of the Capital National Bank?

494 A. I have examined the certificate and the certificate register and the Deposit Ledger containing the account of certificates of deposit.

Q. And the general books of the bank?

A. Yes sir.

Q. You may state Mr. Whitmore what books you have examined with reference to the certificate referred to and the transaction it purported to represent.

A. That depends upon the meaning of your question,—as to the certificate itself I have examined the Certificate Register, and the Ledger containing the certificate account.

Q. I will ask you to state Mr. Whitmore, referring to the certificate register in what manner the bank can ascertain what certificates of deposit are outstanding and unpaid,—this bank.

495 A. As to the total amount of certificates outstanding on any given date that should be shown by the account in the Depositors' Daily Balance Book No. 2. To prove that account a list of the unpaid Certificates can be taken from the Certificate of Deposit Register.

Q. Can you state from this deposit book you refer to what specific certificates of deposit are outstanding and unpaid at any given time?

A. What do you *maen* by deposit book?

Q. Upon what book do you say the general balance of certificates of deposit on each day are shown?

A. In this book—it is Depositors' Daily Balance Book No. 2.

Q. Can you tell or can any one tell by reference to this
496 depositors' Daily Balance Book what specific certificates of deposit are outstanding on any day, even if the book is correctly and regularly kept?

A. No sir I cannot and no one else can.

Q. You may explain why that is true.

497 A. Because the numbers of the certificates issued, and paid is not given on this Depositors' Daily Balance Book No. 2.

Q. Nor the name of the holder of the certificate?

A. Nor the name of the person to whom issued.

Q. Is there a book of the bank in which you can find that information?

A. Yes sir,—there is a book from which you can find what certificates have been issued and the names of persons to whom they are issued, and the amount issued, and the date when the particular certificate was paid.

Q. What book is that?

A. That is the book called "Certificate of Deposit Register."

Q. Can you tell by reference to the stub book of certificates issued whether any given certificate has been paid?

498 A. No sir, you can not.

Q. Then is there any other book kept by this bank except the Certificate of Deposit Register by which any one can tell whether a certain certificate is outstanding and unpaid on any given date?

499 A. There is no other book.

Q. You may state how you can ascertain what certificates are outstanding, and with what book the certificates of deposit register must agree if correctly kept.

500 A. To ascertain what certificates of deposit are outstanding on a certain day, that is the last business day that the bank had transacted business for instance, you would take off from the certificate of deposit register a list of the numbers and amounts, or the amounts alone of all certificates which were not marked paid upon the certificate register. The total of such certificates should agree with the total of certificates outstanding as shown in the account upon the Depositors' Daily Balance Book No. 2.

Q. And the total of certificates shown on the Certificate of Deposit Register as unpaid, should agree with the account in this Balance Book to which you refer?

Q. With what book if any or account, should the total of certificates outstanding and unpaid, as shown by the certificate of deposit register, agree.

501 A. I have already stated that they should agree with the balance shown on the same day in the Depositors' Daily Balance Book No. 2.

Q. Now you may state if the books show the issuance of this certificate No. 24452 for $100,250.00 issued to J. E. Hill, Treas. Exhibit No. 140.

A. Yes sir, the book shows the issuence of this certificate.

Q. What book do you refer to?

A. Certificate of Deposit Register.

502 Q. Do any of the other books of the bank show its issuance?

A. Yes sir.

Q. What book?

A. The Certificate account in the Depositors' Daily Balance Book No. 2 for March and April, 1891. Certificate account number two, under date of April 25", 1891.

Q. Upon what date does it appear upon the books of the bank, the entry, of the issuance?

A. I just stated that. April 25th 1891.

Q. Does that refer to certificate No. 24452 which bears date April 21st 1891.

A. It is the same amount. No certificate for that amount is entered on the books for April 24th, so that it must be the same certificate entered on the 25. No number is mentioned on the balance book.

Q. Now you may state if on this same day any other account carried on the books of the bank received a credit of like amount.

A. Yes sir.

Q. What account is it, and where do you find it?

503 A. In the same balance book, Depositors' Daily Balance Book, No. 2, under date of April 25th, 1891, the Nebraska Relief Committee has a — of $100,250.00.

Q. Do the books of the bank show,—you may state if the books of the bank show a credit to this Nebraska Relief Fund of $100,250.00, and also the issuance of the certificate of deposit in the sum of $100,250.00.

504–519 A. The books show both transactions.

Q. Now you may state when that certificate of deposit No. 24452 purports to have been paid by the bank as shown by the certificate, or its books.

A. I am unable to state from the stamp on the certificate when it was paid. The Certificate register shows payment 4/28/91.

Q. What does that indicate?

A. April 28th 1891, the depositors' Balance Book, No. 2, C/D account. No. 2 shows that a certificate for this amount was paid on that day. The certificate that appears upon the register under date of April 24th, and is dated April 24th, but it does not appear in the account on the Balance Book until the 25th.

* * * * * * *

520 Q. You testified this afternoon that on the same day that this certificate of deposit for $100250.00 was issued to Mr. Mosher that also a credit of that same amount was entered upon the books of the bank to the account of the Nebraska Relief fund, did you?

A. Yes sir.

Q. Now you may state if you have examined the books of the Capital National Bank to ascertain if this credit of $100,250.00 to the acount of the Nebraska Relief fund has been taken, or checked out of that account as shown by the bank books.

A. Yes sir, I have.

Q. You may state what disposition has been made of that credit

to the Nebraska Relief fund as shown by the books of the bank.

521 A. The amount of the credit to the Nebraska Relief committee was withdrawn by means of charges made at various times to the account.

Q. Charges on account of what?

A. Charges on account of the Nebraska Relief committee.

Q. But how were those apparently drawn out?

A. Well the books simply show charges to the account,—whether they were checks drawn by somebody, or whether they were orders or vouchers, which were paid, I have no means of knowing. They are simply charges made against the account there must have been some authority to the bookkeeper to make those entries, the form of the authority of course I do not know.

Q. Does the account appear by the books to have been run for some time and to have been drawn out in small items, or in one lump sum?

522 A. It ran for a considerable length, of time, and I think there were other deposits made to the account, and there were numerous charges made from day to day until the account was wiped out, and in fact there became an overdraft in the account, and then that was made good by means of deposits or credits to the account.

Q. Have you examined the books of the Capital National Bank during the month of December 1889 so that you can state whether or not the bank had an account on its books with J. E. Hill?

A. I have.

Q. Did it keep such an account?

A. They did.

Q. You may turn to the book and page where such an account is kept.

A. Depositors' Balance Book No. 1 for November and December 1889 on the page beginning with the name of "Honneywell J. H." the second entry from the bottom of the page.

Q. When does that account appear on the books for the last time under his name?

A. "J. E. Hill, Tr" the account is closed December 24th, 1889.

Q. What becomes of the account after it is closed on this date?

A. There is a charge of $23,328.75 made to the account, and there is a circle drawn around the charge which would indicate that it was not to go on the depositors' pass book. And I find that on the same day was opened an account on the Balance Book No. 2 called "State Treasurer," and this balance or charge to the account of J. E. Hill is on that date entered as a deposit to this new account State Treasurer $23,328.75.

Q. Are the amounts identical in each account?

A. Yes sir, the debit and credits correspond to each other.

Q. Calling your attention to the account in the balance Book, November and December 1889 No. 2, under date of December 24th,

in the account of "State Treasurer" wherein appears in
523 credits two items as follows,—$23,328.75, and under it $100,000.00 I will ask you if that indicates that there has been any changes, or erasures?

A. There has been some work done there with a knife apparently in scratching the figures.

Q. I will ask you if you have examined this Balance Book, for November and December 1889, No. 2 identified as Exhibit No. 46, with reference as to whether or not that book is in balance.

A. I have.

Q. Have you examined it for December 23" 1889?

A. Yes sir.

Q. And for how long subsequent?

A. Well I footed the balances for the 23rd, 24th and 26th days of December 1889, and I have examined the balance books at various dates from that time down to the first of January 1892.

Q. Does the book which you are referring to contain the deposit account during the months of November and December 1889?

A. It contains the deposit accounts of the Individual depositors from the letters "M" to "Z," including Certificates of Deposit.

Q. And one of those books was used for two months including the names of depositors whose names began with the letters from "M" to "Z"?

524 A. Yes sir.

Q. Now you may state if the book referred to, Exhibit 46, is correctly footed on December 23" 1889.

A. On December 23rd 1889 the book is correctly footed.

Q. Is it correctly footed on the next business day, which was December 26th, 1889?

A. It is not.

Q. You may state the nature of the discrepancy, or error.

A. There is an error or discrepancy of $100,000.00 in the footings.

Q. Wherein does that error occur if you can tell.

A. It occurs in the footing of the page beginning with the name of Scott I. M.

Q. Is that the page upon which occurs the account of "State Treasurer"?

A. Yes sir, it is the 26th.

Q. On this 24th day of December when this credit of $100,000.00 appears in the account of "state treasurer" you may state if there was a check drawn against the account, and a charge shown, on this same book, under the same date, December 24th, 1889.

A. There is a charge against the account of "state treasurer" on December 24th, 1889 of $50,000.00.

Q. It is the same day that the credit of $100,000.00 is given?

A. Yes sir.

Q. Have you examined the books from this time, December 24th, 1889 and subsequent to that time to ascertain how long this discrepancy of $100,000.00 continues to exist on the books?

A. Yes sir, I have.

Q. You may state now how far that appears on the books, how long it continues?

525 A. It continues every day upon this balance book No. 2 of November and December from the 26th day of December until the first of January 1890.

Q. When this book is closed, and used up, what becomes of the accounts in that book?

A. They are transferred to another book. Balance Book, No. 2 for January and February 1890.

Q. Does this same discrepancy of $100,000.00 exist in the book which follows and succeeds this one?

A. Yes sir, and in all books down to the 28th day of December 1892.

Q. Do you mean to state that this book Exhibit 46, and all books of like kind which succeed and follow, and in which these same accounts were kept, continued to be out of balance to the amount of $100,000.00 from December 26th, 1889, to December 28th, 1892.

526 A. In my former answer where I stated December 28th, make that December 15th, 1892. These deposit books were out of balance until December 15th, 1892. The total of deposits carried on the General balance book from December 15th to 28th, 1892 was $100,000.00 less than the total carried on the depositors' balance books.

(Mr. DEWEESE:).

Q. The depositors' balance then was correctly footed from December 15 to 28th, 1892,—it was correctly footed with the balance entered of $100,000.00?

A. No sir. They simply made their corrections in the footing but upon the General Balance books they showed $100,000.00 more than the actual deposits were. Now the footings on the Balance Books from December 26th, 1889 to December 15" 1892, the footings as they are made, the totals, deducting the overdrafts, agree with the total of deposits shown on the General Balance Book. They incorrectly footed these balance books during all of that time, and that incorrect footing was then shown upon the general Balance Book, so that at the times from December 26th down to the date I have mentioned the General Balance Book showed just $100,000.00 less than the actual deposits of the bank.

(Mr. DEWEESE:)

Q. Instead then of being a "forced balance" it was a forced unbalance of $100,000.00.

A. Yes sir, they made a forced balance upon this book, and then carried it to the General Balance Book.

Q. If the individual Balance Book had been correctly footed, what would have been the effect as to increasing or decreasing the total amount of deposits as shown by the books?

527–530 A. If the book had been correctly footed it would have shown $100,000.00 more deposits than the total showed as entered.

Q. Do you mean by that, that it would have shown a liability of $100,000.00 more than it did actually show by making the error in footing?

A. Yes sir.

Q. Is this General Balance Book you speak of, the one you referred to two or three times, in which the balances of accounts are all entered?

A. Yes sir, it shows the resources and liabilities of the bank, each business day of the year.

* * * * * * *

531 Q. Now you may state if you have examined the Journals of the bank during these periods to ascertain if on the day this credit of $100,000.00 appears to the account of the state treasurer, if that amount was entered on the Journal of the bank?

A. I have.

Q. You may state if that amount of $100,000.00 was ever entered upon the Journal of the bank?

A. The amount of $100,000.00 would not appear upon the Journal as an independent or separate item, but it would be included in the total of deposits shown on the Journal for that day.

A. It wasn't entered at all upon the Journal for that day.

COURT: You mean to say that that is the first and only entry, is upon the Depositors' Balance Book?

532-534 A. Yes sir.

COURT: And that was the original and not by transfer?

A. It was entered from a deposit ticket I presume, if there was one, this is the book of original entry of the deposits and the several accounts of depositors.

COURT: But the One Hundred thousand dollars was not included upon the Journal?

A. The One Hundred thousand dollars does not appear upon the Journal.

Mr. THOMAS: Does it appear upon the General Balance book?

A. No sir.

* * * * * * *

535 Q. The fact that if the individual deposit book, and the items properly taken to the General Balance book would have shown the General Balance book out of balance $100,000.00 would that indicate to you that any credit was given at the time to the account of the State Treasurer?

A. It, alone, would not indicate that to me.

Q. What do you mean by that answer?

A. Well the fact that a deposit is entered upon the books to the credit of any account presumes the fact that there was a deposit made for that amount, that the bank actually received that money.

Q. But if the effect of that entry increased the liabilities $100,000.00 and there was no corresponding entry, or, the other side was $100,000.00 less would that indicate that anything of value was received for which that entry was made?

A. Well it wouldn't disprove the presumption that the bank received something of value. If I go into a bank and make a deposit of $100,000.00, it is credited to my account. Now it has gone into the possession of the bank. Some individual in the bank may take that $100,000.00 and put it in his pocket. It is withdrawn from the cash of the bank, but I had made the deposit. Now the fact that this $100,000.00 is credited to that account would indicate that the bank had received $100,000.00 on that day.

Q. Would the fact that the books if properly kept would
536 show $100,000.00 less assets than liabilities would that indicate that the $100,000.00 was put among the assets of the bank on that day?

A. That is a different question. This indicates that the bank received $100,000.00 these entries that were made here, and the difference between the total amount of the deposit shown on the General Balance book, and the total amount shown on the individual balance book would indicate that $100,000.00 was abstracted in some way on this day.

Q. When do you say this account was finally correctly footed, and made to agree with the General Balance Book?

A. The correct footings are shown on December 25", 1892.

Q. And when does it agree with the amount carried to the General Balance Book?

A. December 28th, 1892 the correct totals upon the individual balance book agree with the correct total on the General Balance Book.

* * * * * * *

Q. On what day do you say they were made to agree?

A. On the 28th day of December 1892 the totals agree.

Q. I will ask you if on that day any notes were taken into the bank and charged to its Bills Receivable account?

A. Yes sir, on December 28th, 1892 there were notes placed in the bank.

Q. You have examined the books to ascertain the fact?

A. Yes sir.

Q. Now you may state what notes went into the bank that day, and were charged to its Bills Receivable account.

A. Well there were a number of notes.

537 Q. Was there one signed by C. W. Mosher?

A. The books show that a note of C. W. Mosher, two notes of C. W. Mosher were put into the bank that day.

Q. Give the numbers and the amount.

A. No. 50642, $20,000.00, and # 50643, $20,833.34.

Q. Were there any notes went into the bank that day that were signed by Mr. Outcalt?

A. Yes sir.

Q. Give the number and the amount.

A. # 50640 R. C. Outcalt, $15,000.00, and # 50641 R. C. Outcalt, $14,166.66.

Q. Making a total of how much?

A. $70,000.00.

Q. Now on that day was there an account of Mosher and Outcalt carried on the books which had a credit to it of $30,000.00?

A. Yes sir.

Q. What became of that account that day?

A. There was charged to that account $30,000.00.

Q. Did that take off the entire account?

A. I don't know as to that.

Q. Would that indicate, this charge to that account of $30,000.00?

A. That a check of Mosher & Outcalt had been drawn for that amount on that account and paid that day.

Q. And the two notes of Mr. Mosher, the two notes of Mr. Outcalt, and the check of Mosher and Outcalt make a total of how much?

A. $100,000.00.

Q. Do those entries appear on the books the same day that you say that the books are made to agree, and are properly footed?

A. It is upon the same day that the two totals do agree.

Q. Now referring to this account of Mosher and Outcalt, which at the time had a credit of $30,000.00 I will ask you if you
538 have examined the books of the bank so that you are able to state how long this account had had that credit prior to this day, and when it obtained it as shown by the books?

A. The account of Mosher & Outcalt ran for some time with the bank, that is there has been an account there on the Depositors' Balance some time prior to this date.

Q. I call your attention to the account of Mosher & Outcalt under date of December 24th, 1892, and ask you to examine the book and state if at that time this account received a credit of any amount?

A. Yes sir.

Q. For what amount?

A. $30,000.00.

Q. And on the same day did the books of the bank show that Mr. Mosher & Outcalt gave any notes to the bank?

A. They do.

Q. You may state for what amount, and the numbers and who gave them?

A. No. 50638 C. W. Mosher $17,500.00; and No. 50639 R. C. Outcalt $12,500.00.

539 Q. And these two notes taken together do they equal the amount of the credit which the account of Mosher & Outcalt was given that day?

A. Yes sir, they equal $30,000.00.

Q. I will ask you to state if you have made an examination of the books of the Capital National Bank to ascertain what were the assets and the liabilities of the bank at the time of the suspension of the bank as shown by the bank's books?

A. I have.

Q. You may state what were the assets of the bank as shown by its books on January 21st, 1893.

Q. I will ask you if the books showing the condition of the bank at the time of the failure are in court?

A. Yes sir.

Q. You may state what were the assets of the bank as shown by i s books on January 21st, 1893.

A. $1,031,157/40.

540 Q. You may give the items that comprise that amount.

(Mr. DEWEESE:) You now propose to read from something, please state what you propose to read from.

A. It is from Exhibit 21.

(Mr. DEWEESE:) Whis is the General Balance Book, of the Capital National Bank. By whom does that purport to have been kept, the entries written, or by whom were they written if you know?

A. I don't know who actually made the entries here, but they were made by a bookkeeper in the bank.

(Mr. DEWEESE:) You don't know who that bookkeeper was?

A. No sir, I don't know, there is nothing to indicate who kept the journal.

A. In giving the total of the assets I give the net total deducting the amount of circulation or United States bonds to secure circulation, I give just simply the excess of bonds, which makes a difference of $45,000.00 as shown in this General Balance Book.

Mr. THOMAS: We offer in evidence page of the General Balance Book "C" of the Capital National Bank identified by the reporter as Exhibit No. 1033 except the lead pencil memorandum contained thereon.

541 (Mr. DEWEESE:) This page is offered by the plaintiff, I would like to ask the witness what the first column of figures is the first column on the left hand side, the left hand column under the name "Monday" is a credit or debit.

A. And what does the other column immediately to the right represent?

A. The liabilities. I might explain that this bank kept its General Balance Book, the entry of balances, as of the morning of the day given at the top of the page, so that these balances on this page are really the balances in this account at the close of business on Saturday January 21st, that was the last business day of the bank.

(Mr. DEWEESE:) The 22nd was Sunday and these were entered up on Monday morning?

A. Yes sir.

Q. You mean the entries there appearing under Monday the 23rd, what day's business is that?

A. I have explained that that was Saturday's business, at the close of business on Saturday the 21st.

Exhibit No. 1033, read in evidence as follows,—

"Monday Jan'y 23/93.

Capital stock	.....	$300,000.
Surplus %	.....	6,000.
U. S. Bond %	$50,000.	
Circulation %	.....	45,000.
Redemption Fund	1,400.	
Stock and bond %	325.	
Furniture %	5,770.	
B/R	851,880.07	
Cash	28,731.79	
Bills of Exchange	4,997.97	
Chemical Nat. Bank	.....	37,196.99
542 Am. Exch. Nat. Bank	.....	2,228.23
U. S. Nat. Bank, Omaha	4,552.99	
South Omaha Nat. Bank	2,371.16	
Packers Nat. Bank	3.27	
First Nat. Bank Kans. City	600.38	
Schuster Hax Nat. Bank	882.17	
Blackstone Nat. Bank	1,079.86	
Merchants Nat. Bank, Neb. City	.....	250.11
First Nat. Bank, Beatrice	2,709.18	
Knauth Nachod & Kuhne	220.70	
Walsh & Putnam	2,800.	68,694.72
Clearing House %	.....	965.95
Undivided profits	.....	6,457.20
Real estate %	112,533.16	
Wages %	1,193.33	
Suspense %	69.	
Discount Int. & Exch	.....	1,920.00
Interest paid account	2,787.87	
Expense %	1,249.46	
Deposit %	.....	607,444.00
	1,076,157.40	1,076,157.40

Q. Referring to the page just introduced in evidence Exhibit No. 1033, wherein appears the items "deposit account" $607,444.00. I will ask you to state what that contains, that account, that is whether it contains both certificates of deposit and open deposit accounts?

A. It contains both, contains individual deposits, all country bank deposits and all certificates of deposit. They had two depositors' balance books and then a bank balance book.

Q. Now you may state what portion of that amount constituted the individual and open ac-ount deposits.

A. This item of $607,444.00 is the net amount of their deposits. The overdrafts having been deducted from the gross deposits.
543 Adding the overdrafts the deposits are $640,952.14. Deducting the certificate of deposit account it would leave the individual check deposits, and the bank deposits $543,650.87.

(Mr. Deweese:)

Q. Is that at the time the bank failed?

A. Yes sir.

Q. I will ask you to state if you have made an examination of the books of the bank to ascertain some of the notes that were carried by the bank as Bills Receivable and were a part of its assets at the time of its failure, or suspension.

A. No sir, I have made no examination of the books of the bank with that in view.

Q. Have you made an examination of any of the books?

A. I have examined the books of the Receiver as to Bills Receivable which were on hand at the time of the failure of the bank as shown by his records, and have examined the books of the bank as to the registration of those particular notes on the books of the bank.

Q. You mean to state that you have examined the notes of the Receiver as on hand as part of the assets of the bank, and so shown on his books?

A. No I don't mean to say I have examined the notes.

Q. Have you examined the books?

A. Yes sir.

Q. And have compared them with the books of the bank?

A. Yes sir, I have examined the books of the bank with reference to particular paper that was listed on the books of the Receiver, but not as to all of the paper that was listed on the books of the Receiver.

Q. I say as to part of it.

A. I say I have as to certain notes.

Q. Now you may state if you find among the notes referred to, any that were executed by C. W. Mosher?

544 A. I find in the books the record of notes that were made by C. W. Mosher.

(Mr. Deweese:)

Q. You didn't see the notes and you don't know who did make them, you simply saw the record of the note in the Receivers book purporting to be a note made by C. W. Mosher?

A. Yes sir, and the same record in the bank books, the Discount Register of the bank shows that a note similar to the note recorded by the Receiver, was there entered.

Q. You may give a list of the notes you find executed by Mr. Mosher giving the number and the amount.

A. There are in the assets of the bank, coming into the possession of the Receiver at the time of the failure, now—they went into the assets of the bank, into the statement of the assets of the bank at the time.

(Mr. DEWEESE:)

Q. And the foundation you have for saying that is that you find these listed in the Receivers book, and find a corresponding register in the books of the bank?

545 A. I don't know whether the Receiver ever had these notes or not, of course.

Q. The notes which you refer to are the notes which are listed on the Receivers books as a part of the assets of the Capital National Bank coming into his hands as Receiver?

A. Yes sir.

Q. And have you compared them with the books of the Capital National Bank as to the amounts and numbers and makers so that you know that these notes were entered on the Discount Register, and also entered on the books of the Capital National Bank as a portion of their assets, and a part of its Bills Receivable?

A. Yes sir.

Q. You may give the list as above asked.

546

Number.	Maker.	Date taken in bank.	Date of note.	Due.	Amount.
50632	C. W. Mosher.....	Oct. 27-'92	Oct. 27-'92	Jan. 28-'93	$10,000.00
13000	C. W. Mosher.....	Aug. 10-'92	Aug. 10-'92	Feb. 13-'93	1,948.33
50637	C. W. Mosher.....	Dec. 20-'92	Dec. 20-'92	Jun- 20-'93	5,000.00
50644	C. W. Mosher.....	Dec. 31-'92	Dec. 30-'92	Jul- 2-'93	5,000.00
50642	C. W. Mosher.....	Dec. 28-'92	Nov. 11-'92	Mar. 14-'93	20,000.00
50643	C. W. Mosher.	Dec. 28-'92	Dec. 12-'92	Mar. 15-'93	20,833.34
50638	C. W. Mosher.....	Dec. 2-'92	Dec. 24-'92	Jun- 27-'93	17,5000.00
50633	C. W. Mosher.....	Oct. 27-'92	Oct. 27-'92	Apr. 30-'93	5,000.00

Q. Making a total of how much?

A. 85,281.67.

Q. Have you made a similar examination with reference to notes signed by Edwin W. Mosher?

A. I have.

Q. And can you state the notes that were on hand with the Receiver as assets of the Capital National Bank, that were also a part of the assets of the bank as shown by the books of the bank at the time of its falure, as shown by the books of the Receivers, and as you have compared it and verified it by the books of the bank?

A. I can give a list of the notes of Edwin W. Mosher which appear upon the books of the Receiver, and I have investigated the books of the bank and find the same notes entered upon the Discount Register as having been received by the bank.

Q. And were entered in the general books of the bank?

A. Yes sir.

Q. You may give the list in the same manner as you did with reference to C. W. Mosher.

547

Number.	Maker.	Date taken in bank.	Date of note.	Due.	Amount.
131000	Edwin W. Mosher...	Jul- 6-'92	Jul- 7-'92	Jan. 8-'93	$5,000.00
131001	" " " ...	Jul- 6-'92	Jul- 5-'92	Jan. 8-'93	5,000.00
131002	" " " ...	Jul- 6-'92	Jul- 5-'92	Jan. 8-'93	5,000.00
131003	" " " ...	Jul- 6-'92	Jul- 5-'92	Jan. 8-'93	5,000.00
134007	" " " ...	Oct. 19-'92	Oct. 15-'92	Apr. 18-'93	12,730.00
134008	" " " ...	Oct. 19-'92	Oct. 15-'92	Apr. 18-'93	10,600.00
134009	" " " ...	Oct. 19-'92	Oct. 15-'92	Apr. 18-'93	8,611.00
134010	" " " ...	Oct. 19-'92	Oct. 15-'92	Apr. 18-'93	5,000.00
134011	" " " ...	Oct. 19-'92	Oct. 15-'92	Apr. 18-'93	5,000.00
136005	" " " ...	Dec. 27-'92	Dec. 27-'92	Jun- 30-'93	2,500.00
50101	" " " ...	Jul- 8-'91	May 1-'91	Demand ...	5,903.77
50102	" " " ...	Jul- 8-'91	May 1-'91	Demand ...	5,505.68
50103	" " " ...	Jul- 8-'91	May 1-'91	Demand ...	5,623.70
50104	" " " ...	Jul- 8-'91	May 1-'91	Demand ...	4,307.28
50105	" " " ...	Jul- 8-'91	May 1-'91	Demand ...	3,968.25
50106	" " " ...	Jul- 8-'91	May 1-'91	Demand ...	6,000.00
50108	" " " ...	Jul- 8-'91	May 1-'91	Demand ...	6,881.18
50109	" " " ...	Jul- 8-'91	May 1-'91	Demand ...	5,963.86

Q. Making a total of how much?

A. 106,594.92.

Q. Now you may state if you have made a similar investigation with reference to notes of the Wester- Manufacturing Company signed by E. Hurlburt Jr. Manager.

A. Yes sir, I have.

Q. Now you may give the list of them, just as you have the notes of C. W. and Edwin W. Mosher.

A. I will state that these notes of the Western Manu-
548 facturing Company, that I shall give here, are notes that appear by the record to have been signed "Western Manufacturing Company by E. Hurlburt Jr. Manager.

A. As to some of the notes of the Western Manufacturing Company I have examined the notes themselves, which are in possession of the Receiver, I think there are some thirty six notes.

Q. And the others you get from the Receivers books?

A. Yes, sir, and the registration books.

549

Number.	Maker.	Date taken in bank.	Date of note.	Due.	Amount.
122018	Western Mfg. Co.....	Aug. 24-'92	Jun- 17-'92	Dec. 20-'92	$5,000.00
122016	"	Jul- 30-'92	Jun- 17-'92	Dec. 20-'92	5,000.00
131017	"	Sep. 20-'92	Jul- 20-'92	Jan. 29-'93	5,000.00
132012	"	Oct. 19-'92	Oct. 20-'92	Feb. 23-'93	5,000.00
132009	"	Oct. 17-'92	Aug. 6"-'92	Feb. 9-'93	5,000.00
132008	"	Oct. 17-'92	Oct. 1-'92	Feb. 4-'93	5,000.00
132010	"	Oct. 17-'92	Aug. 14-'92	Feb. 17-'93	5,000.00
133009	"	Oct. 10-'92	Sep. 22-'92	Mar. 25-'93	5,000.00
133011	" ...	Oct. 19-'92	Sep. 6-'92	Mar. 9-'93	5,000.00
133012	" ...	Oct. 19-'92	Sep. 10-'92	Mar. 13-'93	5,000.00
133013	"	Oct. 19-'92	Sep. 14-'92	Mar. 17-'93	5,000.00
133015	"	Oct. 19-'92	Sep. 27-'92	Mar. 30-'93	5,000.00
134002	"	Oct. 17-'92	Oct. 1-'92	Apr. 4-'93	5,000.00
134040	"	Jan. 5-'93	Jan. 5-'93	Apr. 8-'93	5,000.00
134039	" ...	Jan. 5-'93	Jan. 5-'93	Apr. 8-'93	5,000.00
136000	" ...	Dec. 9-'92	Dec. 19-'92	Jun- 22-'93	5,000.00
136001	" ...	Dec. 10-'92	Dec. 8-'92	Jun- 11-'93	5,000.00
136002	"	Dec. 12-'92	Dec. 8-'92	Jun- 11-'93	5,000.00
136003	"	Dec. 10-'92	Dec. 8-'92	Jun- 11-'93	5,000.00
136008	"	Jan. 5-'93	Dec. 19-'92	Jun- 22-'93	5,000.00
136010	"	Jan. 6-'93	Dec. 2-'92	Jun- 6-'93	5,000.00
137002	"	Jan. 5-'93	Jan. 3-'93	Jul- 6-'93	5,000.00
137001	"	Jan. 5-'93	Jan. 3-'93	Jul- 6-'93	5,000.00
137003	"	Jan. 21-'93	Jan. 21-'93	Jul- 24-'93	5,000.00
134001	"	Oct. 17-'92	Oct. 1-'92	Apr. 18-'93	5,000.00
134013	"	Oct. 27-'92	Oct. 22-'92	Apr. 25-'93	5,000.00
135005	"	Nov. 30-'92	Nov. 26-'92	May 29-'93	5,000.00
133014	"	Oct. 19-'92	Sep. 22-'92	Mar. 25-'93	5,000.00
134003	" ..	Apr. 7-'92	Oct. 1-'93	Apr. 1-'93	5,000.00
131010	"	Jul- 26-'92	Jul- 25-'92	Jan. 28-'93	5,000.00
118004	"	Feb. 15-'92	Feb. 3-'92	Aug. 6-'92	5,000.00
131011	"	Jul- 26-'92	Jul- 25-'92	Jan. 28-'93	5,000.00
133003	"	Sep. 20-'92	Sep. 1-'92	Mar. 4-'93	5,000.00
133004	"	Sep. 20-'92	Sep. 6-'92	Mar. 9-'93	5,000.00

Now there are several notes which I am able to find upon the books of the bank, of the Western Manufacturing Company, which are in hands of the receiver. Which are shown on his books, and which are not shown upon the books of the bank. I have not been able to find that they were entered.

(COURT:) Can you state any of those?

A. I have not read any of those. I still have four others left. (Witness continues reading as foll-ws):

133002	"	Sep. 15-'92	Sep. 25-'92	Mar. 18-'93	5,000.00
133005	"	Sep. 29-'92	Sep. 15-'92	Mar. 18-'93	2,500.00
134005	"	Oct. 17-'92	Oct. 15-'92	Apr. 18-'93	5,000.00
133000	"	Sep. 9-'92	Sep. 6-'92	Mar. 9-'93	5,000.00

550 (COURT:)

Q. And the rest of them do not appear upon the books of the bank to have them counted within its assets?

A. Yes sir, they were rediscounted apparently, and turned up as rediscounts against the Receiver.

(COURT:) How many of them are there?

(DEWEESE:)

Q. How do you know they were discounted have you ever seen them?

A. I think I have seen some of them Mr. Deweese.

(Mr. DEWEESE:)

Q. You speak of having seen some of them, are they the ones that are here?

A. I think some of them are in that (indicating) bunch, if you have the bunch of notes.

(DEWEESE:)

Q. Will you give a list of them that are here?

A. I think all of the notes that I have on this list that I have not already read, but one, are here, this one I was unable to find any record of in the bank.

(Witness continues to read as follows:)

133881	" ...	Sep. 13-'92	Mar. 17-'93	....	5,000.00
136081	"	Jan. 15-'92	Jan. 13-'93	... .	5,000.00
135042	"	Jan. 10-'93	May 13-'93	....	5,000.00
133681	" ..	Sep. 13-'92	Mar. 13-'93	....	5,000.00
132105	" ...	Aug. 16-'92	Feb. 16-'93	....	5,000.00
141017	"	Aug. 29-'92	Mar. 4-'93	....	5,000.00
135003	" ...	Nov. 23-'92	May 23-'93	....	5,000.00
133041	"	Dec. 17-9-	Mar. 17-'93	....	2,500.00

551 Now that is all the notes I have here except the one note of $5,000.00 which shows upon the Receiver's books as having been filed as a claim a rediscount and the note was lost apparently.

(COURT:)

Q. And does not appear upon the books of the Capital National Bank as an asset?

A. Well I don't know as to that because I don't know the number of it, don't know anything about it.

Q. You may state what you find with reference to the lost note you speak of.

A. I find on the books of the Receiver the allowance of a claim for the lost note of the Western Manufacturing Company for $5,000.00.

Q. You don't have the number of that note you say?

A. No sir.

Q. And for that reason you cannot make an examination of the books?

A. No sir.

Q. Now you may state the total amount of notes of the Western Manufacturing Company to which you have testified, that the books, that is the books of the bank do not show, but which appear to have been issued and rediscounted by the bank and filed with the Receiver as a claim against the bank.

552 A. The total amount is $37,500.00.

Q. Does that include the lost note?

A. No sir.

Q. What is the total amount of all the notes to which you have testified, not including these rediscounts not shown upon the books and not including the lost note, I mean the notes of the Western Manufacturing Company which you have just testified.

A. The total of the notes shown on the Discount Register of the bank is $192,500.

The total of the notes which are attached to the deposition as rediscounts, but which are not shown upon the books of the bank is $37,500.00.

The lost note is $5,000.00 making a total of $235,000.00.

Q. These are what are classed as Western Manufacturing Company Notes?

553 A. Yes sir.

Q. Now you may state Mr. Whitmore if you have made an examination of the books of the Capital National Bank to ascertain if any interest was received by the bank on any of these notes to which you have testified as having been executed by C. W. Mosher, Edwin W. Mosher and the Western Manufacturing Company.

A. I have.

Q. You may state if the books of the bank show if any interest was received by the bank of any of the notes signed by C. W. Mosher to which you have testified, either when the notes were taken by the bank, or paid, or at any other time.

A. I have investigated the books as to the notes to which I have testified of C. W. Mosher, Edwin W. Mosher and the Western Manufacturing Company, and there is nothing on the books,—the books do not show that any interest was received at the time any of these notes were taken except in the case of note No. 135005 of the Western Manufacturing Company taken November 30" 1892 the books showing as to that note as receipt of $280.00 interest.

(Mr. DEWEESE:)

Q. What book is that shown in, some of the books of the bank?

554-560 A. Yes sir, there is a book called the "interest received" book.

* * * * * * *

561 Exhibit #1037 received and read in evidence as follows:

"Monday, June 21, '86. 571.

222. U. S. Nat. Bank. N. Y. $20,000.000.

Q. Calling your attention Mr. Whitmore to Exhibit No. 1037 I will ask you to explain what the entry U. S. Nat. Bank, N. Y. $20,000.00 indicates and signifies.

A. It indicates a charge against the United States National Bank of $20,000.00 on accounts of funds transferred from New York.

Q. Has that entry as shown on the Journal been transferred and posted on the account of the United States National Bank
562 of Omaha to the Ledger of the Capital National Bank?

A. Yes sir, it has been properly transferred to the Ledger account of the United States National Bank. It appears on Ledger "A" (Exhibit 11,) of the Capital National Bank on page 222 on the line bearing the number "21" in the left hand column.

Mr. THOMAS: We offer in evidence the line indicated and referred to by the witness, (Exhibit No. 1083).

The following entry received and read in evidence.

"222. U. S. Nat. Bank.

1886.

June 21, N. Y. 571 20,000.00."

Q. I will ask you if you have examined the books of the bank to ascertain if there was a corresponding charge on that day to New York or any bank in New York.

563 A. I have made such an examination.

Q. Give the result of that examination.

A. I find no corresponding charge against New York, or any New York bank, with which the Capital National Bank was then doing business, on that day.

564 Mr. THOMAS: We offer in evidence the following portion of the General Balance Book "A" of the Capital National Bank identified by the reporter and also by the Notary Mr. Ricketts as Exhibit No. 19, the column under date of Wednesday December 29th 1886, together with the corresponding titles of accounts in the left hand column of the same page, each of said columns being identified by the reporter as Exhibit No. 1039.

The columns offered are received and read in evidence, being as follows,—(Exhibit No. 1039).

565 1039 (25) Morning, Wednesday Dec. 29/36.

Capital Stock		300000 00
Surplus		12000 00
U. S. Bond ac	50000 00	
Premium ac	7188 43	
Circulation ac		45000 00
Redemption Fund	1900 00	
Stock & Bond ac	22739 34	
Furniture ac	5650 00	
B/R	725826 12	
Cash	55378 44	
Bills of Exchange	25458 45	
Commercial Nat'l Bank, Chic	27747 31	
U. S. National Bank Omaha	14011 93	
Omaha Nat'l Bank "	4628 78	
Merchants Nat'l Bank "	1911 83	
Commercial Nat'l Bank "		603 20
Chemical Nat'l Bank	46321 32	
Drovers Nat'l Bank	158 73	
Blackstone Nat'l Bank	4865 70	
American Exchange in Europe	66 46	
First Nat'l Bank Beatrice		5307 67
Merchants Nat'l Bank, Nebr. City		268 40
Bank of Cass County	47 15	
Schuster, Hax & Co	1500 73	
First Nat'l Bank, Kans. City	5179 87	
Walsh & Putnam	11600 00	
Hurbut, E. Jr	667 83	
Undivided profits		9 36
Rediscount		52090 60
Real Estate	1450 00	
Tax	77 33	
C. W. Marsh	521 65	
Discount, Interest & Ex		36644 92
Interest Paid	8214 90	
Wages	5149 98	
Expenses	3735 67	
Deposit ac		580073 80
	1031997 95	1031997 95

Not in over drafts Bank O. D. in..$11,665.87

566 Mr. THOMAS: We offer in evidence from the same book the column under date of Tuesday August 2nd 1887, also the column containing the title of accounts in the left hand column of the same page each of said columns being identified by the reporter as exhibits No. 1040.

* * * * * * *

The columns offered are received and read in evidence, (Exhibit No. 1040.)

567 1040 (26) Morning of Tuesday, Aug. 2/87.

Capital Stock		300000 00
Surplus		16000 00
U. S. Bond ac	50000 00	
Premium ac	6200 00	
Circulation ac		45000 00
Redemption Fund	2250 00	
Stock & Bond ac	15281 00	
Furniture ac	5650 00	
B/R	832941 44	
Cash	87631 50	
Bills of Exchange	42096 44	
Commercial Nat'l Bank, Chic	11998 98	
American Exch. Nat'l Bank	3048 07	
U. S. National Bank Omaha	12079 52	
Omaha Nat'l Bank "	6130 13	
Merchants Nat'l Bank "		948 75
Commercial Nat'l Bank "		2335 16
Chemical Nat'l Bank	28570 52	
Drovers Nat'l Bank	131 53	
Blackstone Nat'l Bank	240 97	
American Exchange in Europe	722 54	
First Nat'l Bank, Beatrice	639 48	
Merchants Nat'l Bank, Nebr. City	300 11	
Bank of Cass County	467 39	
Schuster, Hax & Co	3119 24	
First Nat'l Bank, Kans. City	1058 18	
South Omaha Nat'l Bank	1042 48	
Walsh & Putnam	10400 00	
Hurlbut, E. Jr.	442 83	
Undivided Profits		30 18
Real Estate	17874 32	
C. W. & W. W. Marsh	3008 35	
Discount, Int. & Exch		6799 24
Wages ac	1083 33	
Interest Paid ac	2835 72	
Expense "	1360 05	
Deposit "		777490 79
	1148604 12	1148604 12

Not in Country Bank over-drafts..	3435.07	
Ind. Overdrafts	53828.74	
Total over-drafts	**57263.81**	

568 Mr. THOMAS: We offer in evidence from the same book the column under date of Thursday October 6th 1887, also the column containing the titles of accounts in the left hand column, of same page, each of said columns being identified by the reporter as Exhibits No. 1041.

The columns offered are received and read in evidence, as follows, **(Exhibit No. 1041.)**

569 1041 (27) Morning of Thursday, Oct. 6/87.

Capital Stock		.....	300000
Surplus		.....	16000
U. S. Bond ac		50000 0–	
Premium ac		5500	
Circulation		.....	45000
Redemption Fund		2250	
Stock & Bond ac		16129 55	
Furniture ac		5650	
B/R	867.30 / 786663.70	787531 50	
Cash		104617 55	
Bills of Exchange		42458 65	
Chemical Nat'l Bank		7496 58	
American Exch. Nat'l Bank		21742 29	
Commercial Nat'l Bank, Omaha		114 90	
U. S. Nat'l Bank "		21724 78	
Omaha Nat'l Bank "		4078 88	
Merchants Nat'l Bank "		453 19	
First Nat'l Bank Kans. City		922 94	
Schuster, Hax & Co.		816 45	
D-overs Nat'l Bank		.....	1071 07
Blackstone Nat'l Bank		3590 67	
American Exchange in Europe		1268 86	
South Omaha Nat'l Bank		1478 28	
Merchants Nat'l Bank, Nebr. City		468 53	
First Nat'l Bank Beatrice		.....	1997 55
Bank of Cass County		.....	323 29
Commercial Nat'l Bank, Chic		491 17	
Clearing House ac		.....	4159 04
Walsh & Putnam		10000	
Hurlbut, E. Jr.		442 83	
Undivided Profits		.....	30 18
Rediscount ac		.....	10000
Real Estate ac		15888 82	
C. W. & W. W. Marsh		2974 19	
Discount, Int. & Exch		....	19306 82
Wages ac		3249 99	
Interest Paid ac		9474 22	
Expense ac		2503 48	
Deposit ac		.....	725430 36
(Not in) Country Bank over-drafts	3977.13	1223318 31	1223318 31
Overdrafts	19393.52		
Total over-drafts	23370.65		

570 Mr. THOMAS: We offer in evidence from General Balance Book "B" of the Capital National Bank, the same being identified by the reporter and also by the Notary Mr. Ricketts, the column under date of December 14th, '88, also the column contain-

ing the titles of accounts in the left hand column of same page, each of which are identified by the reporter as Exhibit No. 1042.

The columns offered received and read in evidence as follows, (Exhibit No. 1042.)

571 (28) Friday, Dec. 14, 1888.

Capital Stock	.....	300000
Surplus	.....	20000
U. S. Bonds	50000	
Premium ac	4000	
Circulation ac	.....	54000
Redemption Fund	1730	
Stock and Bond ac	9148 88	
Furniture	5650	
B / R	824864 18	
Cash	71448 91	
Bills of Exchange	32986 83	
Chemical Nat'l Bank	33453 11	
American Exch. Nat'l Bank	10158 06	
Commercial Nat'l Bank Omaha	.....	3510 39
U. S. Nat'l Bank "	9330 28	
Omaha Nat'l Bank "	5943 97	
Merchants Nat'l Bank "	.....	2242 34
First Nat'l Bank Kansas City	2045 03	
Schuster, Hax & Co	321 63	
Drovers Nat'l Bank	49 29	
Blackstone Nat'l Bank	951 22	
American Exchange in Europe	725 40	
South Omaha Nat'l Bank	684 43	
Merchants Nat'l Bank, Nebr. City	524 14	
First Nat'l Bank, Beatrice	.....	958 09
Bank of Cass County	39 86	
Commercial Nat'l Bank Chic	3303 97	
Knauth, Nachod and Kuhud	254 80	
Walsh & Putnam	8500	
Undivided Profits	.....	305 12
Discount ac	.....	121180 43
Real Estate ac	22608 03	
C. W. and W. W. Marsh, Coll,	4752 21	
Discount, Interest and Exch	.....	37373 34
Wages ac	7769 93	
Suspense ac	18 35	
Interest Paid ac	10445 34	
Expense ac	2890 57	
Deposit ac	.....	594028 71
	1124598 42	1124598 42

Over Drafts.

Country Banks	3001.12
Individual	$50524.22
Total	$53525.34

572 Mr. THOMAS: We offer in evidence from the same book column under date Tuesday October 1st, 1889, also the column containined the title of accounts in the left hand column of same page, each of said columns being identified by the reporter as Exhibit No. 1043.

The column offered is received and read in evidence as follows, (Exhibit No. 1043.)

573 1043 (29) Morning of Tuesday, Oct. 1/89.

Capital Stock	.....	300000
Surplus ac	.....	24000
U. S. Bond ac	50000	
Premium "	3750	
Circulation "	.....	45000
Redemption Fund	1500 00	
Stock & Bond ac	21954 94	
Furniture "	5770	
B/R	761156 53	
Cash	65054 70	
Bills of Exchange	36665 78	
Chemical Nat. Bank	1550 94	
Am. Exch. Nat. Bank	14996 55	
Com'l Nat. Bank, Omaha	540 89	
U. S. Nat. Bank, "	13690 85	
South Omaha Nat. B'k	442 19	
First Nat. B'k, Kan. City	731 31	
Schuster, Hax Nat'l Bank	413 38	
Drovers Nat. Bank	59 04	
Blackstone Nat. Bank	1487 80	
Am. Exch. in Europe	725 40	
Merchants Nat. Bank, Neb. City	338 51	
First Nat. Bank, Beatrice	.....	2900 20
Bank of Cass County	153 36	
Com'l Nat. Bank, Chicago	746 22	
Knauth, Nachod & Kuhne	26 09	
Clearing House ac	.....	12597 50
Walsh & Putnam	8500	
Undivided Profits	.....	598 38
Rediscount ac	.....	15682 92
Real estate ac	37976 70	
C. W. & W. W. Marsh, Coll's	4969 65	
Discount Int. & Exchange	.....	16508 99
Wages, ac	4453 32	
Suspense ac	9 20	
Interest Paid ac	2895 64	
Expense "	3473 06	
Deposit "	.....	626744 06
	1044032 05	1044032 05

Not in Country Bank over-drafts.	5390.35
Overdrafts	31906.15
Total overdrafts	37296.50

574 Mr. THOMAS: We offer in evidence from the same book column under date of Thursday, December 12, 1889, also column containing titles of accounts in the left hand column of same page, each of said columns being marked Exhibit No. 1044.

The columns offered received and read in evidence as follows,—(Exhibit No. 1044.)

575 1044 (30) Morning of Thursday, Dec. 12/89.

Capital Stock	... .	300000
Surplus ac	.....	24000 00
U. S. Bond ac	50000	
Premium "	3750	
Circulation "	.....	45000
Redemption Fund	1709 41	
Stock and Bond ac	11954 94	
Furniture	5770	
B / R	742485 61	
Cash	38643 31	
Bills of Exchange	32036 78	
Chemical Nat. Bank	22379 67	
Am. Exch. Nat. Bank	10047 26	
Com'l Nat. Bank, Omaha	.....	1721 92
U. S. Nat. Bank, "	2656 98	
South Omaha Nat. Bank	.....	402 58
First Nat. Bank, Kans. City	1211 18	
Schuster Hax Nat. Bank	252 17	
Blackstone Nat. Bank	461 45	
American Exchange in Europe	725 40	
Merchants Nat. Bank, Neb. City	246 45	
First Nat. Bank, Beatrice	.....	3517 07
Bank of Cass County	13 40	
Com'l Nat. Bank, Chic	288 39	
Knauth, Nachod & Kuhne	.....	24 08
Clearing House ac	.....	
Walsh & Putnam	8500 00	
Undivided Profits	.....	598 38
Rediscount ac	.....	138103 49
Real Estate "	41565 47	
C. W. & W. W. Marsh, Coll's	4969 65	
Discount, Int. & Exchange	.....	32807 20
Wages ac	6699 98	
Suspense ac	.....	17 38
Interest Paid ac	9559 91	
Expense "	4259 91	
Deposit "	.....	453995 22
	1000187 32	1000187 32

Not in Country Bank overdrafts.	8,545.14
Overdrafts	46,975.68
Total over-drafts	55,520.82

576 Mr. THOMAS: The plaintiffs offer in evidence from the same book the column under date of Friday, October 3, 1890, together with the column at the left on same page containing titles of accounts, each of said columns being identified by the reporter as Exhibit No. 1045.

* * * * * * *

The columns offered, received and read in evidence, as follows,—(Exhibit No. 1045.)

577 1045 (31) Morning of Friday, Oct. 3 / 90.

Capital Stock	.....	300000
Surplus ac	.....	28000
U. S. Bond ac	50000	
Premium "	2687 50	
Circulation "	.....	45000
Redemption Fund	2250 00	
Stock & Bond ac	6909 88	
Furniture "	5770	
B / R	846174 42	
Cash	98687 07	
Bills of Exchange	30133 69	
Chemical Nat. Bank	10885 84	
Am. Exch. Nat. Bank	29907 13	
Com'l Nat. Bank, Omaha	6969 85	
U. S. Nat. Bank, "	28857 54	
South Omaha Nat. Bank	1741 21	
First Nat. Bank, Kans. City	805 61	
Schuster Hax Nat. Bank	550 48	
Blackstone Nat. Bank	803 33	
Am. Exch. in Europe	725 40	
Merchants' Nat. Bank, Neb. City	.....	13772 20
First Nat. Bank Beatrice	1418 99	
Bank of Cass County	.....	493 50
Com'l Nat. Bank, Chicago	1813	
Knauth, Nachod & Kuhne	195 82	
Clearing House ac	.....	
Walsh & Putnam	5600	
Undivided Profits	.....	500 19
Rediscount ac	.....	82375 00
Real Estate ac	54401 59	
Discount, Interest & Exch	.....	14827 21
Wages ac	4537 07	
Expense "	38 10	
Taxes paid ac	2000	
Interest paid "	2683 09	
Expense "	1769 42	
Deposit "	.....	713347 93
	1198316 03	1198316 03

Not in Country Bank overdrafts.. 4,824.66
Overdrafts..... 51,401.96

Total overdrafts..... 56,226.62

578 Mr. THOMAS: We offer in evidence from the same book the entry or column under date of Saturday December 20, 1890, together with the column at the left of the same page containing the titles of accounts, each of said columns being identified by the reporter as Exhibit No. 1046.

The columns offered are received and read in evidence, as follows,—(Exhibit No. 1046.)

579 1046 (32) Morning of Saturday, Dec. 20 / 90.

Capital Stock		300000
Surplus ac		28000
U. S. Bond ac	50000	
Premium "	2400	
Circulation "		45000
Redemption Fund	2250 00	
Stock & Bond ac	6909 88	
Furniture "	5770	
B / R	823829 70	
Cash	63326 82	
Bills of Exchange	39424 90	
Chemical Nat. Bank	20866 95	
Am. Exch. Nat. Bank	16448 84	
Com'l Nat. Bank Omaha	5503 53	
U. S. Nat. Bank "	15020 70	
South Omaha Nat. Bank	849 93	
First Nat. Bank, Kans. City	570 21	
Schuster Hax Nat. Bank	4108 32	
Blackstone Nat. Bank	231 58	
Am. Exchange in Europe	725 40	
Merchants' Nat. Bank, Neb. City	1035 49	
First Nat. Bank Beatrice		313 64
Bank of Cass County		98 23
Com'l Nat. Bank, Chicago	675 08	
Knauth, Nachod & Kuhne	153 82	
Clearing House ac		6887 02
Walsh & Putnam	5600 00	
Undivided Profits		500 19
Discount ac		43676 25
Real Estate ac	55099 59	
Discount, Int. & Exch		33085 61
Wages ac	6750 23	
Suspense "	9 26	
Taxes Paid ac	2000	
Interest Paid ac	14769 98	
Expense "	2775 51	
Deposit "		689544 78
	1147105 72	1147105 72

Not in Country Bank overdrafts..	6608.94
Overdrafts	27342.90
Total overdrafts	33951.84

580 Mr. THOMAS: The plaintiffs offer in evidence from the same book, the column under date of Friday July 10, 1891, together with the column at the left of the same page containing the titles of accounts each of said columns being marked by the reporter as Exhibit No. 1047.

The columns offered are received and read in evidence as follows,—(Exhibit No. 1047.)

581 1047 (33) Mor-ing of Friday, July 10/91.

Capital Stock		30000
Surplus ac		30000
U. S. Bond ac	50000	
Premium "	1437 50	
Circulation "		45000
Redemption Fund	600 00	
Stock & Bond ac	52913 49	
Furniture "	5770	
B/R	801780 97	
Cash	67398 46	
Bills of Exchange	9332 75	
Chemical Nat. Bank		27672 60
Am. Exch. Nat. Bank		4109 81
Com'l Nat. Bank, Omaha		13123 61
U. S. Nat. Bank, "	1984 76	
South Omaha Nat. Bank	1963 93	
First Nat. Bank Kansas City	52 15	
Schuster Hax Nat. Bank	619 72	
Blackstone Nat. Bank	177 74	
Am. Exch. in Europe	725 40	
Merchants Nat. Bank	1024 96	
First Nat. Bank Beatrice		3999 39
Bank of Cass County		36 32
Knauth, Nachod & Kuhne	80 04	
Clearing House ac		3229 16
Walsh & Putnam	2800	
Undivided Profits		16003 79
Rediscount ac		117391 10
Real Estate "	56230 60	
Taxes Paid "	1500 00	
Discount Int. & Exch		1301 08
Wages ac	1068 33	
Suspense	105 06	
Interest Paid	733 77	
Expense ac	408 14	
Deposit "		496840 91
	1058707 77	1058707 77

Not in Country Bank overdrafts..	10050.26
Overdrafts	52834.98
Total overdrafts	62885.24

582 Mr. THOMAS: We offer in evidence from the same book, the column under date of Saturday September 26th, 1891 together with the column at the left of the same page, containing the titles of accounts each of said columns being marked by the reporter as Exhibit No. 1038.

The columns offered are received and read in evidence as follows,—(Exhibit No. 1048.)

583 1048 (34) Morning of Saturday, Sept. 26/91.

Capital Stock	.....	300000
Surplus ac	.....	32000
U. S. Bond ac	50000	
Premium "	868 82	
Circulation ac	.....	45000
Redemption Fund	2250	
Stock and Bond ac	53063 49	
Furniture "	5770 00	
B/R	765133 40	
Cash	59451 46	
Bills Exchange	10794 09	
Chemical Nat. Bank	18442 41	
Amer. Exch. Nat. Bank	8263 27	
Com'l Nat. Bank, Omaha	.....	286 61
U. S. National Bank "	14908 97	
So. Omaha Nat. Bank	43	
First Nat. Bank, Kans. City	380 06	
Schuster Hax Nat. Bank	288 88	
Blackstone Nat. Bank	620 48	
Amer. Exch. in Europe	725 40	
Merchants' Nat. Bank, Nebr. City	.....	416
First National Bank, Beatrice	2458 92	
Bank of Cass Co	.....	66 32
Knauth, Nachod and Kuhne	169 01	
Clearing House ac	.....	3914 82
Walsh & Putnam	2800	
Undivided Profits	.....	253 79
Rediscount ac	.....	198571 52
Real Estate "	56478 20	
Taxes Paid	1500 00	
Dis. Int. and Exch	.....	14531 78
Wages ac	3239	
Suspense ac	127 83	
Int. Paid "	3495 40	
Expense "	2423 92	
Deposit "	.....	473112 60
Continental Nat. Bank	4500 00	
	1068153 44	1068153 44

Not in Country Bk. overdrafts...	9521.76
Indiv. overdrafts	16778.51
Total overdrafts	**26300.27**

584 Mr. THOMAS: We offer in evidence the following portion of General Balance Book "C" of the Capital National Bank, the same being identified by the reporter and also by the Notary as Exhibit No. 21 the column under date of Thursday December 3/91 also the column containing the titles of the accounts in the left hand column of the same page, each of said columns being identified as Exhibit No. 1049.

Exhibit No. 1049 is received and read in evidence as follows,—

585 1049 (35) Morning of Thursday, Dec. 3/91.

Capital Stock		300000
Surplus ac		32000
U. S. Bond ac	50000	
Premium ac	868 82	
Circulation ac		45000
Redemption Fund	2250 00	
Stock & Bond ac	53511 49	
Furniture	5770	
B/R	735474 93	
Cash	44314 02	
Bills of Exchange	10583 88	
Chemical Nat. Bank	402 45	
Am. Exch. Nat. Bank	16673 83	
U. S. Nat. Bank	7605 55	
South Omaha Nat. Bank	1510 24	
First Nat. Bank, Kans. City	224 55	
Shuster Hax Nat. Bank	1588 07	
Blackstone Nat. Bank	1034 78	
Am. Exch. in Europe	725 40	
Merchants Nat. Bank N. C.		604 46
First Nat. Bank Beatrice	224 28	
Bank of Cass County		3 17
Knauth Nachod & Kuhne	193 08	
Continental Nat. Bank Boston	5155 00	
Clearing House ac		
Walsh & Putnam	2800 00	
Undivided Profits		253 79
Rediscount ac		125196 14
Real estate "	56572 70	
Taxes Paid "	2512 50	
Discount Interest & Exchange		23023 10
Wages ac	6530 83	
Suspense "	46 43	
Interest Paid ac	14792 48	
Expense "	3792 17	
Deposit "		499078 82
	1025159 48	1025159 48

Not in Country Bank overdrafts	7415.11
Overdrafts	41372.29
Total overdrafts	48787.40

586 Mr. THOMAS: We offer in evidence from the same book the column under date of Saturday December 10, 1892, together with the column at the left hand of the same page containing the titles of accounts each of said columns being marked Exhibit No. 1050.

Exhibit No. 1050 is received and read in evidence as follows:—

587 1050 (36) Saturday, Dec. 10/92.

Capital Stock	.....	300000
Surplus ac	.....	6000
U. S. Bond ac	50000	
Circulation "	.....	45000
Redemption Fund	1350	
Stock and Bond ac	325	
Furniture	5770	
B/R	687696 01	
Cash	44848 45	
Bills of Exchange	2591 31	
Chemical Nat'l Bank	41924 17	
Am. Exch. Nat'l Bank	4513 70	
U. S. Nat'l Bank, Omaha	29880 78	
South Omaha Nat'l —	858 03	
Packers' Nat'l Bank	194 27	
First Nat'l Bank, Kansas City	719 15	
Schuster, Hax Nat'l Bank	808	
Blackstone Nat'l Bank	389 57	
Merchant's Nat'l Bank	1038 74	
First Nat'l Bank, Beatrice	1264 27	
Bank of Cass County	.....	1 74
Knouth, Nachod & Kuhne	237 62	
Clearing House ac		
Walsh & Putnam	2800	
Undivided Profits	.....	26 81
Rediscount ac	.....	34054 38
Real Estate	110352 04	
Discount, Interest and Exchange	.....	19905 68
Wages ac	7159 98	
Suspense ac	.....	1432
Interest Paid ac	1356 25	
Expense "	5872 93	
Deposit "	.....	605529 66
	1011950 27	1011950 27

* 2580.45
16812.50

19392.95

[* In pencil in copy.]

588 & 589 Q. I will ask you if you have seen the published statements of the assets and liabilities of the Capital National Bank, that have been introduced in this case?

A. I have.

* * * * * * *

590 By Mr. THOMAS:

Q. Now I will ask you to state if you have compared those published statements with those dates on the General Balance book, to ascertain if they agree, that is if the published statement agrees with the condition of the bank as shown by the General Balance book of that date, of that day's business?

A. I have.

Q. I will ask you to state if they agree?

591 A. They do not agree in all respects.

Q. Referring particularly to the condition of the bank as shown in the general balance book under date of December 29" 1886 Exhibit No. 1093, and comparing that with the published statement of the condition of the bank at the close of the day previous, you may state what discrepancies or variations there are between the General Balance Book, and the Published statement.

A. The loans as published were $11600.00 more than shown on the Balance Book. The amount due from all Banks is $34,339.47 more than is shown by the General Balance books. Bills of Exchange to the amount of $25,458.45 are not identified or shown in the published statement. And real estate to the amount of $1450.00 is not shown in the Published statement.

* * * * * * *

592 Q. You may state what discrepancies if any you find in the condition of the bank as shown by the General Balance book under date of August 2nd, 1887 and the published statement of the condition of the bank of that day, or the day preceding.

593 A. I will answer that question by giving the correct date, at the close of business on a certain day. The published statement of the condition of the bank at the close of business on August 1" 1887 shows loans $75,681.97 more than is shown on the General Balance book. The published statement shows $53,313.71 more due from all banks than is shown by the General Balance book. The published statement shows $17,874.32 less real estate than is shown by the General Balance book. The published statement shows $10,462.98 more cash than is shown by the General Balance book. The published statement does not show as such Bills of Exchange account, amounting to $42,096.44.

The published statement shows $51,032.12 less overdrafts than are shown by the Individual Balance Books at that time.

Q. Now you may state what discrepancies you find if any, between the condition of the bank as shown by the books and the published statement at the close of business October 5" 1887.

594 A. The published statement shows $44,658.83 more loans than are shown on the General Balance book.

The published statement shows $60,435.78 more due from all banks than is shown by the General Balance book.

The published statement shows $14,438.82 less real estate than is shown by the General Balance Book.

The published statement does not show, as such, the Bills of Exchange Account, which amounted to $42,458.65.

The published statement shows $20,780.12 less overdrafts than were shown by the Individual Balance book.

Q. You may state what discrepancies, you find, if any, between the published statement of the condition of the bank at the close of business December 12th, 1888 and the condition of the bank as disclosed by the books of the bank.

A. The published statement shows $36,080.00 more loans than are shown on the General Balance Book.

The published statement shows $64,975.68 more due from all banks than is shown by the General Balance book.

The published statement shows $10,000.00 less notes and Bills discounted than is shown on the General Balance book.

The bills of Exchange account amounting to $32,986.83 is not shown as such on the published statement.

The published statement shows $41,991.16 less overdrafts than are shown by the Individual balance book.

Q. You may state what discrepancies you find, if any, between the condition of the bank at the close of business September 30" 1889 as shown by the published report and as disclosed by the books of the bank?

595 A. The published statement shows $39,003.35 more loans than is shown by the General Balance book.

The published statement shows $89,059.13 more due from all banks than is shown on the General Balance book.

The published statement shows $46,000.00 more notes and Bills discounted than the General Balance book shows.

The Bills of Exchange account amounting to $36,665.78 is not shown as such in the published statement.

The published statement shows overdrafts $30,924.05 less than the Individual Balance book.

Q. You may state what discrepancies you find, if any, between the condition of the bank at the close of business December 11th 1889 as disclosed by the published statement, and as disclosed by the books of the bank.

596 A. The published statement shows $66,295.47 more loans than the General Balance book.

The published statement shows $44,809.47 more due from all banks than the General Balance book.

The published statement shows $18,735.55 more cash than the General Balance book.

The published statement shows $12,081.25 more rediscounts than the General Balance book.

The Bills of Exchange account, amounting to $32,036.78 is not shown as such in the published statement.

The published statement shows $44,543.70 less overdrafts than the Individual Balance book.

Q. You may state what discrepancies you find, if any, between the condition of the bank at the close of business December 19th 1890 as shown by the published statement, and as shown by the books of the bank.

597 A. The published statement shows $23,612.70 more loans than the General Balance book.

The published statement shows $79,007.16 more due from all banks than the General Balance book.

The published statement shows $20,000.00 more cash than the General Balance book.

The published statement shows $52,973.32 more rediscounts than the General Balance book.

The bills of Exchange account amounting to $39,424.90 does not appear as such in the published statement.

The published statement shows $24,621.64 less overdrafts than the Individual Balance book.

Q. You may state what discrepancies you find, if any, in the condition of the bank at the close of business July 9" 1891 as shown by the published statement, and as disclosed by the books of the bank.

A. The published statement shows $96,230.60 more loans than the General Balance book.

The published statement shows $72,183.01 more due from all banks than the General Balance Book.

598 The Bills of Exchange account $9,332.75 is not shown as such in the published statement.

The published statement shows real estate $56,230.60 less than is shown on the General Balance book.

The published statement shows $50,050.26 less overdrafts than is shown on the Individual Balance book.

Q. You may state what discrepancies you find, if any, in the condition of the bank at the close of business September 25th, 1891 as shown by the published report and as disclosed by the books of the bank.

A. The published report shows loans $69,006.06 more than the General Balance book.

The published report shows $31,723.67 more due from all banks than the General Balance book.

The published report shows $100,000.00 less rediscounts than is shown by the General Balance book.

The published report shows $56,478.20 less real estate than is shown by the General Balance books.

599 The Bills of Exchange account amounting to $10,794.09 is not shown as such in the published statement.

The published statement shows $22,049.62 less overdrafts than is shown by the Individual Balance book.

Q. You may state what discrepancies you find, if any, between the business of the bank at the close of business December 2nd, 1891

as shown by the published statement, and as disclosed by the books of the bank.

A. The published statement shows $134,780.79 more loans than the General Balance book.

The published statement shows $36,460.29 more due from all banks than the General Balance Book.

The published report shows $30,000.00 more cash than is shown by the General Balance book.

The published statement shows $56,572.70 less real estate than is shown by the General Balance book.

The Bills of Exchange account amounting to $10,583.80 does not appear in the published statement as such.

The published statement shows $45,623.20 less over-
600–654 drafts than are shown by the individual Balance book.

Q. Are those all the comparisons you have made up to this time, between the published statements and the books of the bank?

A. Yes, sir. I would like to have the jury understand that these discrepancies which I have testified to, I don't pretend in my testimony to give all of the discrepancies that existed.

Mr. NORVAL: But these do exist.

A. Yes sir.

Q. And others that you haven't testified to.

A. Yes.

Q. Are you able at this time to testify to other discrepancies that you say exist between the published reports and the books of the bank?

A. I have made no memorandum of other discrepancies.

* * * * * * *

655–678 Q. I call your attention to certificate No. 24452 for $100,250.00. You have testified concerning that certificate in connection with the Relief Fund of which C. W. Mosher was Treasurer. And I believe you stated that the amount of it was entered on the books in open account to the credit of the Nebraska Relief Fund, is that correct?

A. I stated that a like amount was on that day credited to the account of the Relief fund.

Q. Yes, the same amount. And that a certificate of deposit was issued for that same amount on that same day was it?

A. Yes, sir.

Q. Do you find that there is anything wrong about that?

A. Why nothing wrong if the bank received the two deposits.

Q. Well was the certificate ever negotiated, or went into any body's hands, or had to be paid in any way?

A. Why it was paid by the bank.

Q. How do you know?

A. The books show it.

679 Further direct examination.

By Mr. THOMAS:

Q. I will ask you if you have made an examination of the books of the bank showing its condition at the close of business October 2nd, 1890, and compared it with the published statement of that day's business?

A. Yes sir.

Q. You may state what discrepancies if any, you find, between the condition of the bank and this statement.

A. The published statement shows $24,621.64 less overdraft than the individual balance book.

The published statement shows $23,612.70 more loans than the General Balance book.

The published statement shows $20,000.00 more cahs than the General Balance book.

The published statement shows $52,973.23 more rediscounts
680 than the general balance book.

The published statement shows $79,007.16 more due from all banks than the General balance book. The Bills of Exchange account amounting to $39,424.90 is not shown in the published statement.

Q. Have you made a similar comparison for any other date?

A. Yes sir, for the close of business December 9th, 1892.

Q. With the published statement including that day's business?

A. Yes sir.

Q. You may state what discrepancies you find, if any.

A. Well some of the discrepancies are,

The published statements shows $80,905.43 more loans than the General Balance book. The published statement shows $14,907.05 less overdrafts than the individual balance book.

The published statement shows $46,356.76 more due from all banks than the general balance book.

The published statement shows $14,565.48 more cash than the general balance book.

681 The published statement shows $71,734.12 less real estate than the general balance book.

The published statement shows $25,000.00 more rediscounts than the general balance book.

Bills of Exchange account amounting to $2,391.31 is not shown in the published statement.

Q. I will ask you if you have made an examination of the books of the bank to ascertain what notes were on hand at the time of the failure, or prior thereto, that were executed by the Marsh Harvester Company, or the Marsh Binder Manufacturing Company or the Sycamore-Marsh Harvester Company, C. W. or W. W. Marsh, C. E. Tuerk, or any of the various Marsh Companies.

A. I have made such an examination.

Q. You may state the result of that investigation, that is what the books show in regard to notes executed by these various companies or individuals, purporting to have been given to the bank by these

various companies or persons, and to have been entered upon the bank's books as a part of its Bills Receivable.

682 A. Do you want a history of the notes that have been given or do you want a list of the notes that were in the bank when the bank closed?

Q. You may state first what notes of these parties were in the banks as a part of its normal assets at the time the bank closed.

A.	No. 122010 Sycamore Marsh Harvester Co.....	4500.00
	No. 122011 C. W. & W. W. Marsh.....	3600.00
	No. 122012 Marsh Binder Manufacturing Co....	9000.00
	No. 122015 C. E. Tuerk.....	7289.10
	No. 102047 Marsh & Hinds.....	1000.00
	Total	25389.10

Q. Now have you traced these notes, the notes given by these parties back to a date prior to this to ascertain how long they or the renewals thereof had been in the bank, or the notes for which the renewals were given?

A. I have.

683 Q. You may state the result of that investigation.

A. No. 122010 Sycamore Marsh Harvester Co., $4500.00 started July 25th, 1887 as No. 33213 for $8,000.00. It was renewed at various times, and the amount reduced until the 5th of July 1892.

Q. And do the books during any of this period indicate, or show that any interest was ever paid on this note?

684 A. I have not been able to investigate as to *htat*, on all of the dates. I don't think I have investigated that at all as to this note.

No. 122011 C. W. & W. W. Marsh $3600.00 began July 25th, 1887 as No. 32439 C. W. & W. W. Marsh $3600.00. And it was renewed from time to time down until July 5th, 1892.

Mr. WHEDON: Nothing was paid on that?

A. No sir.

No. 122012 Marsh Binder Manufacturing Company $9,000.00 began on July 28th, 1888 as No. 34308 afterwards changed to No. 31291 and the amount originally was $9000.00. That was renewed at various times, but no change was made in the amount and the last renewal was July 5th, 1892.

No. 122015 C. E. Tuerk, $7289.10 began in the Marsh National Bank on May 28th 1884 as number 5664 a- $3225.67, every time this note was paid a renewal note for an additional amount was put in the bank, and I have examined in some instances and found that the difference was put into the interest received account, so that each time this note was renewed, the interest was added in for a certain amount, until the last renewal July 22nd, 1892 when it was made $7,289.10.

No. 102047 Marsh & Hinds $1000.00. This is a renewal of another note for the same amount but I didn't have time this morning

to trace it back any further than one renewal, and I haven't the memorandum here to show what that number is.

Q. Is that all that you have been able to trace back, that you have had time to trace back?

A. No, I have some of the Mosher notes.

Q. You may go ahead and state if you have made similar investigations in regard to notes held by the bank at the time of
685 its failure that were executed by Charles W. Mosher, or Edwin W. Mosher?

A. Yes sir.

Q. You may state the result of that investigation, in the same manner as you have in reference to the Marsh paper.

686 A. The W. C. Mosher paper in the bank at the time of the failure was note No. 50632 for $10,000.00. That began on the date it was taken into the bank. I don't find that it is a renewal of any other note, on October 27th, 1892.

No. 50637, $5,000.00 was taken December 20th, 1892 and it does not seem to be a renewal of any other note.

No. 50644, $5,000.00 was taken December 31st, 1892 and it does not seem to be a renewal of any other note.

No. 50642, $20,000.00 and #50643 for $20,833.34 were taken December 28th, 1892 and do not appear to be renewals.

No. 50638, -17,500.00 was taken December 24th, 1892 and does not appear to have been a renewal.

No. 50633, $5,000.00 was taken October 27th, 1892 and does not appear to be a renewal.

No. 132000, for $1948.33 is a note of C. W. Mosher and H. M. Bushnell, and is a renewal of #114001 taken October 7th, 1891 for $1256.81 and that note appears to be a renewal of a note marked on the "Bill book" as showing the bills that were taken and paid on each day under date of October 7th, 1891 as number 99173 Mosher & Outcalt for $406.14 and No. 100081 for $790.83.

These two notes were paid on the day that this No. 114001 for $1256.81 was given. I am unable to find this 99173 on the discount register, so I don't know when that $406.14 was taken.

The total of the C. W. Mosher paper is $85,281.67.

Q. And can you give the note of E. W. Mosher?

A. The E. W. Mosher paper I think I gave a list of it the other day.

No. 131000 for $5,000.00 began March 14th, 1892.

No. 131001 for $5000.00 began March 14th, 1892.

No. 131002 for $5,000.00 began March 14th, 1892.

687 No. 131003 for $5,000.00 began March 14th, 1892. There were four $5,000.00 notes began on the same day apparently.

No. 134007, for $12,730.00 apparently began on August 28th, 1890.

No. 134008 for $10,600 began apparently on August 28th, 1890.

No. 134009 for $8,611.20 apparently began November 25th, 1889.

No. 134010 for $5,000.00 apparently began October 17th, 1891.

No. 134011, for $5,000.00 apparently began September 3rd, 1891.

No. 136005 for $2500.00 apparently began December 27th, 1892.

No. %101 for $5,903.77, No. 50102, $5505.69; No. 50103, $5623.70 50104, $4307.28; No. 50105 for $3968.25 #50106 for $6,000.00 No. 50108 for $6881.18 and No. 50109 for $5963.86, all these numbers beginning with 50101 are renewals of notes that were taken on October 11th, 1888. They are renewals of a number of notes which were paid October 11th, 1888. I have a list of the notes here, but I didn't have time to trace them back to see when these notes that were paid October 11th, 1888 were taken into the bank. Some of them are identical in amounts with some of the notes I have given here. They are similar in amounts but there are more notes than the notes I have listed, that is more in number. But these notes that I have listed originated sometime prior to October 11th, 1888. The total amount is $106594.92.

Q. Did you examine the books of the bank to ascertain if any interest was received on any of these notes, either at the time they were taken, or marked paid, or at any other time?

A. As to the notes that were in the bank at the time of the failure of E. W. Moshers, I have examined the books as to each one of those.

Q. Now you may state what you found as to the notes C. W. or E. W. Mosher, that you say you have examined concerning.

688 A. I examined as to the notes of C. W. Mosher, that were in the bank at the time of the failure, and I did not find that there was any interest entered on account of any of these notes at the time they were put upon the books.

Q. Have you up to this time examined the notes of the several Marsh companies or individuals that were in the bank at the time of its failure to ascertain if there was any interest paid on them?

A. I have already answered that, I have no schedule of the Marsh notes that were in the bank. I don't remember whether I looked that up or not, that is those that were in the bank when the bank failed.

Q. Have you examined the books to ascertain the notes of the Western Manufacturing company executed by E. Hurlbert, Jr., Manager, that passed through the Capital National Bank up

689 to the time of its failure, and prior to that for any length of time.

A. I have for some time.

Q. How far back have you checked it this time?

A. I have checked notes as far back as July 25th, 1888, taken July 25th, 1888, but I haven't checked prior to that time. And I don't know that I have all of the notes that were taken after July 25th, 1888.

Q. You may state the total amount of Western Manufacturing Company notes which entered into the Bills Received and assets of the Capital National Bank since July 25th, 1888, that you have checked and verified at this time.

A. $755,000.00.

Q. Have you examined the books of the bank to ascertain whether at the time any of the notes included in this list referred to were

taken, or marked paid by the bank, if any interest was received by the bank on any of these notes?

A. I have made such an examination.

690 Q. You may state the result of that examination.

A. On October 2nd, 1890 there is an item of $208.35 interest received apparently on account of Western Manufacturing Company note. On August 28th, 1891 there is an item of $122.00 interest received on account of notes of the Western Manufacturing Company. On May 16th, 1892 there is an item apparently interest on a Western Manufacturing Company note of $170.80. On November 30th, 1892 there is an item of $280.00 interest received apparently for Western Manufacturing Company note. On December 30th, 1892 there is an item of $1250.00 interest received apparently on account of Western Manufacturing Company note. The item of October 2nd, 1890, $208.35 as credited to Interest account, the same item was charged that day to the Western Manufacturing Co., account on the Individual Balance Book. The other credits of $122.00, $170.84; $280.00 and $1250.00 do not appear to have been charged to the Western Manufacturing Company's deposit account, but they are in the interest account as interest received. Now all of these Western Manufacturing Company

691 notes that I have examined, that are in this list are registered with the name of E. Hurlbert, Jr., Manager, following the amount of the note in the discount register, in the column "How secured."

Q. And what rate of interest do they bear as shown by the Discount register?

A. I don't know as to that now. I could easily tell what rate was put on the Register, but I didn't examine that each time.

Q. Aside from these four items that you have mentioned do the books disclose that any interest was paid at any other time on these notes?

692 A. The only examination one could make would be at the time the notes were taken, or at the time they were marked paid on the books.

Q. What was the result of that examination?

A. I have already given that result. There was only five of these notes that showed that any interest had been paid, that is there are only five interest payments.

COURT: How much does that aggregate?

A. The total amount of interest on these five items, as I make it is $2031.19.

Q. And how much do the notes amount to?

A. Those I have traced the aggregate is $755,000.00.

693–707 Q. I will ask you to examine the books of the Capital National Bank to ascertain what overdrafts the bank had at the time of its suspension, particularly calling your attention to the accounts of C. W. Mosher, of Mosher & Outcalt, of E. Hurlbuert Jr., of the Western Manufacturing Company, and of Stark & Mosher and will ask you to state the amount of overdrafts if any,

in each of those accounts, just enumerated, referring to the open account, shown on the books of the bank, at the suspension of business January 21st, 1893.

A. Mosher & Outcalt overdraft	$8983.36
C. W. Mosher per	2927.59
Stark & Mosher	16901.84
Western Manufacturing Co. No. 1, "C. W. M., per."	1361.79
E. Hurlbert Jr. Col.	1756.09
Total	$16720.67

Mr. THOMAS: You may take the witness.

708 Q. They may be renewals of a previous indebtedness.
A. Yes sir.
Q. But how many of them were you couldn't say?
A. I say I haven't made that computation.

Mr. WHEDON: That is all.

Further cross-examination.

By Mr. DEWEESE:

Q. Mr. Whitmore, I call your attention to the evidence you gave the other day in regard to discrepancies in the stat-ments made of the condition of the bank as compared with the books of the bank,—isn't it true that a stat-ment, or report of a bank is made for the purpose of showing all of the assets and all of the liabilities of a bank?

A. That is one of the purposes, yes sir.

Q. The stat-ments that you have testified to are the stat-ments that are required to be made under the Banking Act of Congress to the Comptroller, and published in the newspapers?

Mr. THOMAS: The plaintiff's object as calling for a conclusion and opinion of the witness, not proper cross examination, not the best evidence, and it is an attempt to inject a federal question into the issues in these cases, and immaterial as to by what law and by what authority it is required.

Objection overruled.

The plaintiffs except.

A. They were such statements and reports.

709 Mr. THOMAS: The plaintiffs move to strike out the answer of the witness because it is giving the opinion of the witness upon a question of law, and not upon a subject of fact, nor is it his opinion based upon any books which he has been examined upon.

Motion overruled.

Plaintiffs except.

Q. I will ask you whether these reports are made upon blanks furnished by the Comptroller, under certain headings, and calling for certain accounts of the bank.

Mr. THOMAS: The plaintiffs object as incompetent, irrelevant, and

immaterial, not proper cross examination, calling for a conclusion of the witness, and assuming and an attempt to inject a federal question which is not involved in these cases, and for the further reason that the witness is not shown to have knowledge.

Objection sustained.

The defendants each separately except.

Q. I will ask you to state whether these reports that you have referred to are made on printed blanks that have certain designated headings under which the assets of the bank are sought to be listed.

Mr. NORVAL: The plaintffs object as the witness has not shown that he knows what forms they were.

Objection overruled.

The plaintiffs except.

710 A. The discrepancies to which I have testified, I have arrived at them from an examination of the books of the bank, and the exhibits introduced here in evidence, which are copies of the newspaper publications, and those copies were made by the court reporter, or made by somebody and checked up by the court reporter. I don't know anything about the copy that was furnished the newspaper, whether it was on a form or not.

Q. You have been a bank examiner I believe, of National Banks?

A. Yes sir.

Q. Do you know what is the basis of those newspaper publications?

A. Yes sir; I do.

Q. And what is it?

Mr. NORVAL: The plaintiffs object as incompetent, irrelevant, and immaterial, and not proper cross examination.

Objection sustained.

The defendants each separately except.

Q. You may state whether that publication in the newspaper is from a report made by the President and Cashier of the bank and attested by three directors, to the Comptroller, and the publication being made in accordance with the law governing reports of the condition of National bank-?

Mr. THOMAS: The plaintiffs object as not proper cross examination, incompetent, irrelevant and immaterial under the issues, the witness not having shown that he knows, and calling for matters that he could not know.

Objection sustained.

The defendants each separately except.

711 Q. And I will ask you whether in the reports thus made these publications resulted, and that the headings under which the different classes of assets was called for are the same as the headings in the bank's books as kept by the Capital National Bank.

Mr. THOMAS: The plaintiffs object as not proper cross examination, calling for a conclusion of the witness, incompetent and irrele-

vant, calling for an opinion of the witness, and assuming that he has examined matters necessary for an answer.

Objection overruled.

Plaintiffs except.

A. You mean "from which these publications resulted."

Q. I suppose so.

A. The form furnished by the Comptroller of the Currency upon which reports of condition are made to him by the banks, does not agree with the names of accounts that were kept upon the general ledger of the Capital National Bank, in all cases.

Mr. NORVAL: The plaintiffs move to strike out the answer as not responsive.

Motion overruled.

Plaintiffs except.

A. I haven't answered that part as to whether it resulted in the publications, but I have answered,——

Q. Is the published statement or statements about which you have testified the same as was made on the form furnished by the Comptroller?

Mr. THOMAS: The plaintiffs object as not proper cross examination, incompetent and immaterial and calling for a conclusion of the witness.

712 Objection sustained.

The defendants each separately except.

Q. I will ask you whether these statements from which you have testified are in and of themselves a publication made from the report on the blanks furnished to this bank by the Comptroller of the currency?

Mr. THOMAS: The plaintiffs object as incompetent, irrelevant and immaterial, not proper cross examination, and as predicated upon matters not shown, that there was a printed form furnished this bank, of which this witness has no knowledge.

Objection sustained.

The defendants each separately except.

Q. I will ask you whether these statements to which you have referred are made independently of the requirement of the Comptroller under the National Banking Act for the making of the same, and the publication of the same in the newspapers as is required by the law governing National Banks?

Mr. THOMAS: The plaintiffs object as being an attempt to inject a federal question, and for the further reason that it is incompetent, irrelevant and immaterial, not proper cross examination and asking for an opinion of the witness.

Objection sustained.

The defendants each separately except.

Q. You may state whether these statements that you have testified about are made independently of the reports and are different from

the reports that were made to the Comptroller of the Currency, or are they copies of the same?

Mr. THOMAS: The plaintiffs object as not having been
713–754 shown that there were any reports of that kind to the Comptroller and assuming, and immaterial.

Objection sustained.

The defendants each separately except.

Q. You may state whether the headings under which the assets and liabilities of the bank appear to be listed in the published statements about which you have testified are the same in all respects as the headings, or subjects or titles, for assets and liabilities as kept in the books of the bank.

A. The names of the several accounts are not the same on the books of the bank as in the copies of the published statements which I have examined in all respects.

Q. And these published statements that you refer to constitute the basis of the condition of the bank of which you have testified with reference to discrepancies.

A. Yes sir, I have compared these published statements with the books of the bank, that is these copies of published statements.

* * * * * * *

755 Q. Calling your attention to the credit of $100,000.00 which appears to the account of the State Treasurer under date of December 24th, 1889 and referring to the cross examination of Mr. Deweese in which I think it was intimated that that might just have been written in by some one, and did not enter in as a part of the books. I will ask you to state what the facts are with reference to that, that is, whether or not this entered in and upon the book, was a part of the books and transactions of the bank and entered into that account as shown by the books, if you know.

756 & 757 A. The entry of $100,000.00 in the credit column of the State Treasurer's account was used in that account on that day in making up the balance due the State Treasurer at the close of business December 24th, 1889, and it appears to be regular so far as his checks and deposits are concerned from that time on.

* * * * * * *

758–764 (By Mr. THOMAS:)

Q. Can you and will you procure the remaining nine books that are missing if counsel for defense desired them?

A. Yes sir, I will do so.

Q. Have you examined the balance books, the individual balance books from this date in December 1889 until the date in December 1892 to ascertain if this discrepancy of $100,000.00 continues during all of the period?

A. I have.

Q. Does it so continue?

A. Yes sir.

* * * * * * *

765 Q. Now referring also to that portion of your examination in which you were asked in regard to the change in the Stocks & Bonds account, wherein $30,000.00 was eliminated from that account and added to the Bills Receivable account and particularly calling your attention to the question of counsel in which you were asked if that entry injured the bank in any way. Now I will ask you this question, do the books of the bank indicate that at that time there were any Bills Receivable went into the bank to make up the $30,000.00 that was erased from the account of Stock & Bonds?

766 A. The books don't show that any Bills Receivable were taken by the bank to account for the increase of thirty thousand dollars.

Mr. DEWEESE: Do they show that anything was taken out?

A. No sir.

Q. Does that item of thirty thousand dollars that is stricken from Stocks and Bonds afterwards appear on the books as far as you have been able to find?

A. No sir. I don't think that I have found anything that would indicate that that was returned.

Q. Then do the books indicate that those Stocks & Bonds, if there were any, did not appear in the bank after that time?

A. I think that is true.

Q. And do the books also indicate that no Bills Receivable went into the bank during that transaction, and as a part of it?

767 Q. You may state in your opinion what was the nature of that transaction based upon your examination of the books, and your knowledge as an expert accountant, and state from that why you think it was done, that is why the changes were made.

768 A. The effect of these erasures was to reduce the amount which the bank had in Stocks & Bonds and to increase the amount which the bank had invested in loans and discounts. And there being no entries upon the Journal of such transactions in those accounts on that day, I conclude that the motive for making the changes was to make a different showing upon the books of the bank as to the conditions of those accounts.

Q. If as you say you don't think any Bills Receivable actually went into the bank, and that Stocks & Bonds to that amount evidently were taken out of the bank, what in your opinion was the effect it would have upon the assets of the bank?

769–792 A. Well if Stocks & Bonds were taken out to the amount of thirty thousand dollars, and no Bills Receivable put in, why of course it would reduce the assets of the bank to that amount.

* * * * * * *

793 Q. Now Mr. Whitmore in your examination of the books wherein you have ascertained the dividends declared and what the expenses etc. were charged against Undivided Profits, or other places where they might properly be charged you may state if you found on the books any instance wherein the Capital National Bank ever charged anything off on its books as bad debts.

794-811 A. As to the Marsh National, I couldn't say. As to the Capital National, I have been unable to find anything on the books to show that any losses were charged off except that on February 2nd, 1892 the Surplus account is reduced $30,000.00. On that day there were a number of notes marked paid, and there were certain entries made in the Redemption fund account, and wages and taxes paid and several other accounts, and premium account, and Stocks & Bonds account, but there is nothing in the entries to indicate that those thirty thousand dollars taken from Surplus was used for that purpose, except the fact that the Surplus was reduced thirty thousand dollars, and these other accounts I have mentioned as having entries made in were nearly wiped out. There is a total amount of $11,095.25 of that. And then there were a number of bills that were paid, but of course I couldn't tell whether they were marked paid and charged off as a loss, or whether they were actually paid. I couldn't account for the use of this thirty thousand dollars surplus except that it was used to charge off items.

* * * * * * *

812 Q. I now hand you exhibits identified by the Notary Mr. Ricketts and referred to in the depositions of McDonald, Hale and others, identified as Exhibits No. from 147 to 923½ inclusive, being certificates of deposit issued by the Capital National Bank prior to its suspension and outstanding and unpaid at the time of its failure, and which were subsequently filed with the Receiver as claims against the Capital National Bank, and by the Receiver allowed, and will ask you if you have compared these certificates of deposit and checked them over, with the books of the Receiver, to ascertain if the amount called for by the certificate of deposit, and the amount allowed by the Receiver on each certificate agree.

813 A. I have checked over the exhibits referred to and have compared the amounts, with the amounts shown on the Receiver's book, and the two agree.

* * * * * * *

Mr. THOMAS: We offer in evidence Certificates of Deposit issued by the Capital National Bank, identified by the Notary Mr. Ricketts, also by the court reporter as exhibits Nos. from 147 to 923½ inclusive.

814 Exhibits, Nos. from 147 to 923½ inclusive received and exhibited in evidence. (A list of which may be found herewith.)

Mr. THOMAS: We now make the same offer separately and severally for No. 148 and for each number thereafter to and including No. 923½ each of said exhibits being identified by the Notary Mr. Ricketts, and by the Court reporter and the numbers indicated and shown are referred to in the depositions of Mr. McDonald and Mr. Outcalt, and Mr. Hale, and are identified by them. They being certificates of deposit to the Capital National Bank issued prior to its failure and which were outstanding and unpaid at the time of its suspension, and were subsequently filed with the Receiver as a claim against the bank, and by the Receiver allowed for the amount severally shown by each certificate, and Receiver's Certificate issued

815

Date.	No.	To whom issued.	Amount.	
1887.				
Mch. 2	15775	S. H. King	1000	
	6	" " "	1000	
	7	"	1000	
	8	"	1000	
	9	"	1000	
	15780	"	1000	
	1	"	1000	
	2	"	1000	
	3	"	1000	
	4	"	1000	
Mch. 3	15789	Mrs. G. D. King	1000	
	15790	"	1000	
	1	"	1000	
	2	"	1000	
	3	"	1000	
	4	"	1000	
	5	"	1000	
				(17000.00 in pencil)
1888.				
May 1	17987	E. J. Randall	1700	
Jan. 9	17458	Effie B. Mosher	210	in pencil
				(1910.00 18910.00)
1889.				
July 18	20472	Mrs. R. A. Whitmore	200	
Nov. 11	21161	Mrs. J. C. White	50	
June 22	20309	Anna Swanson	70	
19	20292	S. J. Gardner	6000	in pencil
				(6320 25,230.00)
1891.				
Feb. 2	23922	Thos. Farrel	1015	
Apr. 10	24362	F. Newton	32	
May 9	24541	Lydia Greeman	371.66	
16	24590	E. H. Allen	641.60	
July 5	24910	Hannah Goldberg	100	
	1	"	200	
	2	"	200	
	3	"	200	
	4	"	50	
6	24852	N. Johnson	1300	
25	24977	John A. Peterson	250	
28	24989	John A. T. Hibbs	200	
	24990	"	95	
29	25003	Lydia Greeman	230	
Aug. 3	25024	C. A. Rousch	65	
10	25063	Thos. Farrel	1062.12	
14	25083	C. N. Rousch	20	
22	25129	John A. T. Hibbs	200	
	25130	"	250	
Sept. 6	25269	Thos. Farrel	215	
24	25324	Sam'l McClay R—	2423.97	
Oct. 19	25483	Maud Hammond	7.50	
	9	Lydia Greeman	300	
24	25518	John A. T. Hibbs	200	
Nov. 30	25702	Doctor A. Vogt	500	
Dec. 11	25797	Frank Newton	65	
15	25822	Rob't Smith	100	
16	6	Rob't Weese	200	
17	25830	Rob't Smith	100	
22	25855	L. Krueger	300	in pencil
				(9938.85 35168.85)
1892.				
Jan. 1	25990	Wm. Vogt	500	
2	25921	J. C. White	200	

Date.	No.	To whom issued.	Amount.
1892.			
Jan. 2	25929	R. Weese	800
4	25948	Humphry Bros. Hdw. Co.	1500
6	25957	D. O. Ogg	18
7	25968	Hi Ormann	140
11	25987	Ernest Hoose	100
88			
Jan. 11	25988	Minnie Harse	50
13	25989	Mrs. M. W. Magoon	40
13	26009	D. K. Campbell	90
13	26063	C. G. Aronson	50
15	26019	Frank Newton	47
19	26042	C. J. Bills, Pres't.	500
	3	"	300
	4	"	200
20	26052	"	60
20	3	"	30
21	5	Henry Scarce	50
21	26304	P. H. Miller	80
25	28113	Christina Herrman	150
28	26086	Tillie Furst	100
29	26091	Sadie Senneg	120
30	3	F. A. Sruell	130.29
Feb. 1	26111	A. Bartle	100
1	26120	Ella C. Sathan	42.43
1	26123	Henry Berger	100
	5	May Keeland	20
3	26134	Mrs. M. W. Magoon	60
4	26142	F. A. Truell	300
	3	C. H. Marsh, Treas.	100
5	26151	Lulia Menlove	15
9	26170	S. H. King	100
9	1	T. B. Beach	500
9	5	Wentzel Kucua	100
10	8	Herman Koeing	100
12	26191	Peter Starke	400
5	26209	Mary Berryman	75
16	26212	Jno. Weilman	600
	8	S. H. King	200
17	26221	Jno. Kane	1500
	4	J. P. Lulboat	300
18	26233	Lucy Hoppe	800
20	26239	Mrs. S. L. Larimer	950
20	26241	Fannie French	125
	4	John Aronson	60
23	26253	M. C. Johnson	25
24	8	Fred Weinard Jr.	500
27	26293	G. J. Keller	300
	4	"	200
29	26283	S. H. King	800
Mch. 1	26305	George Knapp	200
1	26312	Hogt Blaney	100
2	7	S. H. King	600
	8	"	600
	26324	Mrs. Lucy Hoppe	200
3	5	S. H. King	1000
	6	"	300
	26333	Mrs. Eshlomer	150
5	27118	S. & C. Mayer	2000
5	9	" "	2500
	26340	C. J. Rearson	212
7	26355	S H. King	800
8	26371	Mrs. Elizabeth Eshleman	950
9	26374	Tillie Furst	200

Date.	No.	To whom issued.	Amount.
1892.			
Mar. 10	26381	Henry Voderberg	100
	6	Mrs. S. C. Larimer	100
11	8	" " "	432.50
12	26401	Henry Stine	270
15	26427	Mrs. M. W. Magoon	50
16	26430	Mrs. Geo. Kraft	100
817			
Mch. 16	26431	F. Newton	30
16	4	Wm. C Haynes	875
21	26460	Charles Hammond	3.50
	2	Charles Humann	200
22	26472	Willard Hammond	2
24	26490	A. W. Kiser	70
25	7	M. Meier	3520
26	26502	Sallie Aronson	55
28	7	Job P. Kirby	1600.75
	8	Thos. Ed Tyres	200
28	26512	A. McWhinney	2000.00
30	26521	Wm. Schroeder	2000
	6	Mary Berryman	170
31	26528	John A. T. Hibbs	250
	9	W. C. Haynes	1700
	26530	"	1200
Apr. 1	26536	Alice G. Bronley	78.75
1	26546	May Keeland	20
4	26554	Sam Lee	300
5	26298	Carl Sock	100
6	26575	Wm. Teason	500
	6	D. O. Osting	40
7	26588	Wm. Frasier	150
8	26595	S. H. King	300
	9	Caroline Albee	200
	26600	D. K. Campbell	120
	1	Geo. Howard	53
8	2	Job P. Kirby	3452
9	26605	Eddie T. Armsun	10
	26607	Mrs. M. W. Magoon	40
11	26619	Henry Voldenberg	100
11	26621	Martha C. Broker	25
12	26627	Geo. Emery	40
	26659	Louisa McWinnie	100
13	26631	Geo. W. Landers	350
14	6	Wm. Wilson Guardian	210
15	26640	Mrs. J. C. Taylor	700
16	26651	Wm. Brings	50
16	26654	Fred Enzion	200
18	26663	C. C. Aold	100
	5	Frank Pacal	100
	6	H. O. Weese	150
19	9	Henry Ortmann	310
19	26671	H. J. Becker	200
	3	J. P. Sullivan	100
20	9	S. H. King	100
	26681	Louisa Nanclir	50
23	3	Chas. Wergen	150
25	26700	Wm. Schultz Jr. Guardian	1000
	4	N. C. Christensen	50
26	9	Hattie Keegar	690
27	26712	Friend Buel	500
	4	John Hallwig	600
29	26730	Marz Zikmun	200
May 2	26742	Christine Small	15
	4	Dora Markson	35
	6	F. G. Heber	25
	26754	Henry Berger	100

Date.	No.	To whom issued.	Amount.
1892.			
May 5	26768	Rev. B. Sprall	700
6	26777	H. C. Keller	300
10	26786	Henry Bickert	250
618			
May 13	26799	Mrs. Maggie Tyler	900
14	26807	John Aronson	160
	28815	S. H. King	100
16	26818	First National Bank Poultney.	....
16	3	C. F. Reda	100
	26823	Louisa McWhinnie	650
	6	Lynne Roche	172
19	26830	Honora Seward	300
19	3	Elizabeth Eshleman	100
19	4	" "	300
	7	M. E. Johnson	75
20	8	Frederick Obert	500
	26841	Carl Elfeldt	500
20	3	I. W. Lansing Co., Judge	625
23	9	W. Kucera	100
24	26853	L. Koch	376
25	6	Harry C. White	300
27	26861	Caroline Albers	200
27	26863	Ella C. Latham	291.80
	4	R. H. Thorp	1100
28	26848	De Vries	385.87
31	26875	W. J. Johnson	100
	6	George Ortmann	750
	7	" "	100
June 1	56900	Frances Spaulding	2398
	26898	Rob't H. Bear	150
2	26904	Geo. Divis	50
3	26913	W. J. Jenkins	700
	4	Mrs. Lis M. Prate	400
	26916	Mrs. Jennie E. Fitchie	2500
4	26926	Schroeder & Beckman	500
6	7	Mrs. J. C. White	50
7	26939	Rob't Arenson	100
8	26944	L. Sillman	200
	26943	Wm. Brings	100
9	26953	Frances Spaulding	500
	4	John Blado	50
10	6	S. H. King	200
11	26974	Rob't Smith	160
15	27002	Tillie Furst	100
16	27007	Austin Humphrey	1040
	8	Carl Elfeldt	800
	27010	Aug. Jan	100
	2	H. Veith *et al.*	4112.08
17	5	Dan O. Osting	12
18	27018	Eugene Braher	110
	27021	Louisa McWhinnie	100
21	27029	C. Hammond	5300
23	27042	Joseph Troop	100
24	27050	Frank Newton	85
	4	John Finigan	350
25	9	W. S. Linord	1600
27	27062	J. J. Hammel	100
	3	" "	50
	6	Cassius S. Weese	2000
	27072	B. Steffens	600
30	27085	A. J. Doran	550
	27077	S. Meyer	10000
29	28100	Mrs. Mary W. Brobse	1785.70

Date.	No.	To whom issued.	Amount.
1892.			
July 1	27091	Joseph Troop	150
	4	May Keeland	15
1	7	Dora Workow	60
2	27107	Fred Block	390
	8	E. Menlove	17
	27111	Thos. W. Harrison	500
819			
July 2	28296	Nettie M. Snyder	200
3	27253	S. H. King	100
5	27115	Jno. Odman	50
	27124	L. D. Laune	500
	7	Martin Schwartz	500
	8	Catherine Schroeder	134.83
6	27130	H. C. Tullis	100
6	2	John McManigal,	3000
	4	Henry Croop	400
	5	Mrs. Emma Frazier	166.68
7	8	A. Bartle	230
	9	John Weilenman	700
	27140	" "	700
8	8	Jno. A. T. Hibbs	500
	9	" " "	500
	27150	" " "	400
	1	" " "	3000
	2	" " "	3000
	4	" " "	100
	5	" " "	100
	6	" " "	100
	7	" " "	400
	8	" " "	500
	27160	" " "	2000
9	5	" " "	131.27
	27171	Robert H. Bear	50
12	5	Geo. Emery	70
13	8	Mrs. M. C. Moulton	945
	9	Wm. Beckman	1000
14	27184	Miss Zadie Rector	250
	27186	Tillie Furst	200
	27193	Carl Werger	500
14	6	Jno. Bledo	50
15	27205	E. A. King	100
16	27211	Charles Brings	50
	27215	Louise McWhinnie	200
	3	Hans Hanson	100
18	6	E. Bloomgreen	80
	27221	Job. P. Kirby	10000
	27220	W. Kucera	100
	2	Wm. Koch	350
18	4	Mrs. M. E. Harris	300
19	6	Harry Weese	250
20	27234	D. O. Osting	20
	5	Harris Person	50
22	9	Eliza Dougherty	2000
	27242	Charles Hammond	5000
23	27246	Tillie Furst	100
25	3	Carl E. Anderson	110
27	27263	Lucy Hoppe	1300
28	9	Mrs. J. F. Moorey	300
29	27272	Sadie Tenney	55
30	27281	Henry Ortmann	100
Aug. 1	27292	Mags Hansen	100

Date.	No.	To whom issued.	Amount.
1892.			
Aug. 1	27283	Dora Wankon	20
	27291	Tillie Furst	100
	4	Mary Keeland	20
	6	Christine Small	15
	9	W. Chunack	300
3	27303	W. Cucera	100
4	27309	G. J. Gessling	330
4	27311	Ella C. Frasier	225
	2	Mrs. Anna Frasier	150
	3	Mrs. Matilda Englehart	121.91
820			
Aug. 5	27321	Emma Johnson	30
6	3	C. H. Gould	125
	27332	Louise McWhinnie	100
	6	John Gribsby	200
	7	Gus Beckstrom	236.30
6	27331	Thos. Calkin	1500
	3	John Dalstrom	40
	5	L. W. Gasantle	150
8	6	C. J. Nobes	1272.50
	7	Mrs. T. B. Beach	375
	9	Robt. H. Bear	60
9	27346	Mrs. Schmale	100
10	27356	W. E. Knight	60
	7	J. D. Hubble	3000
11	27360	S. H. King	700
	27359	Mrs. Sarah M. Wierman	200
	27362	M. E. Johnson	25
12	5	A. Bartel	100
	7	H. Oleshloger	100
13	27371	P. J. Hurley	50
13	3	J. W. Lander	100
	27401	Geo. Olcott, Cashier	5000
	6	A. M. Hau	300
15	27381	Jno. Blade	150
	2	Jno. Blade	125.04
16	7	Robert Arenson	100
	9	Thomas Calkin	1500
	27391	F. Newton	55
17	3	I. G. Chase	650
	4	Eugene Brahier	69
18	9	Chris Daukers	600
	27400	Ella Frasier	230
19	6	R. W. Kiser	50
20	27415	Mrs. Minnie A. Salewire	477
23	27425	C. J. Arenson	173.84
	7	Mrs. B. E. Johnson	60
24	27432	Henry Polk	730
25	27442	H. O. Weese	100
27	27458	Kate Smith	30
	9	Henry Scarce	50
	27463	S. H. King	100
29	6	Grass & Co	500
	7	M. Grass	300
	9	E. A. King	400
31	27480	I. F. Schultz	200
Sept. 1	9	May Keeland	20
	27490	Dora Warkow	55
	3	Mrs. Kain	425
2	4	Simon Mook	300
	5	Henry Schwartz	600
	27502	Mi/- Edith Gray	200

Date.	No.	To whom issued.	Amount.
1892.			
Sept. 5	27512	R. W. Kiser	30
	4	E. Bloomgreen	50
	6	Mrs. M. E. Johnson	40
	7	S. H. King	200
	27521	Tillie Furst	100
	27522	H. R. Reimer	177
6	5	Mary Rance	230
	6	Jno. Edmond	1200
	8	H. E. Scacre	150
7	27533	Caroline Albee	50
8	27548	May T. Banis	100
821			
Sept. 9	27543	Merchants Bank Utica, Neb.	2000
	9	C. J. Nobes	640
10	27556	Ella Conard	115
	7	J. W. Lansing	2867
	27606	M. J. Dobson	20
12	27562	Martha Porter	100
	27571	Jno. Blade	85
13	6	L. W. Gasantte	150
	7	George Knopp	100
	27580	Lizzie Nebamas	40
	6	Victor R. McLacey	50
14	7	Jas. H. Schafer	100
15	27620	Emma Johnson	12
16	27606	Selma Olson	15
	9	S. H. King	100
	27851	Philip Schoop	100
17	27613	M. B. Harris	200
19	27630	Mrs. J. F. Moorey	500
	3	H. Frank	160
20	5	Mrs. Nettie Bash	600
21	27643	F. W. Hedman, Jr	348.28
23	27650	H. A. Weese	100
24	9	Thos. Johnson	100
26	27675	Jno. Odman	100
	6	Sarah Shea	200
27	9	Walwood & Co	300
	27682	Mrs. T. F. Lasch	400
28	7	Charley Werger	200
	8	Carl Werger	150
	9	F. Newton	45
29	27693	A. Haase	50
	5	Charles Archer	125.15
	27701	L. B. Kelley	500
	2	" " "	500
	3	" " "	500
	5	" " "	500
	6	" " "	500
	7	" " "	500
	8	" " "	500
Oct. 7	27718	May T. Parris	148
	27721	August Winkley	200
	8	S. P. Benadon	1500
	27744	John Daniels	1000
	5	" "	1000
2	27729	Hattie E. Carson	1166
3	27735	Slema Olson	7
	27757	Tillie Furst	200
4	6	A. E. Green	200
	9	Mariah Andrews	300
	27740	Ellen Klowp	255.10
	9	H. A. Weese	50

Date.	No.	To whom issued.	Amount.
1892.			
Oct. 5	27752	R. W. Kiser	60
	3	P. J. Hurley	25
	27762	Karis Perron	120
6	7	Mrs. J. W. Fay	475
	9	Thos. M. Morphet	400
	27772	H. P. Reimers	599.49
	4	Julia A. Caldinell	2000
7	8	Jno. Kensfater	25
8	27795	Lena M. Smith	200
1822			
Oct. 11	28151	Thomas Bailey	1000
Oct. 10	27805	W. O. Hartquest	300
	27813	Louise McWhinnie	100
	6	May L. Smith	240
	7	W. C. Haqney	686
11	28156	Thomas Bailey	8000
11	27814	John Daniels	1000
	28158	Thomas Bailey	500
	5	John Daniels	500
	6	" "	500
	27820	B. F. Smith	100
	2	Harry Stein	325
	6	George Bowers	50
	27831	L. W. Garantte	150
12	6	Jno. Kensift	30
	8	M. Miner	100
14	27848	Joseph Troop	50
	27850	Emma Hugilmezer	65
	2	Philip Schoop	280
	4	Jno. Teideman	200
15	27865	Mary Berryman	80
	27933	Mrs. S. J. Dwinn	150
17	27868	S. H. King	300
	27870	E. A. King	100
	2	Rob't Aronson	200
19	9	Aug. Gothe	100
	27881	Chas. Brandt	200
	2	Ermin Johnson	10
20	9	C. V. Keith	225
22	27890	Sarah E. Horn	500
	6	H. J. Buller	100
	7	Ella Conrad	1392
	8	W. J. Johnson	100
	27900	Jas. D. Hughes	40
23	27924	Lute C. Young	2000
24	27906	S. H. King	100
	9	Henrietta Wessel	700
24	27910	K. C. Juebb	150
25	4	Lawrence Acker	100
	6	Wm. Wilterdink	300
	8	Mary Sullivan	1525
26	27922	Dr. W. H. Grant	252
27	27932	Richard Adams	100
	7	August L. Arthelm	1000
	27941	Mrs. G. H. Moulton	1025
	2	" " "	141.55
28	5	Mrs. A. M. Van Ness	100
29	7	John Daniels	500
	8	" "	500
	27950	Jno. Kane	200
31	27979	La Salle National Bank	5000

Date.	No.	To whom issued.	Amount.
1892.			
Nov. 1	27960	Anora Lewell	250
1		August Klein	400
3		Humphrey Bros. Hdw. Co.	2000
	28020	Lute C. Young	400
2	27965	Jno. Dee	400
6		Peter Talbert	385
9		Henry Bartels	50
	27970	Sam Rich	110
2		May Malone	30
3	4	Chas. Brigs	50
5		J. H. Shaw	50
6		Sam Rich	175
7		Charles Deahn	175
4	27980	P. J. Kennedy	4505.30
823			
Nov. 4	27983	Dale D. Drain	5
5	4	R. W. Kiser	30
6		Geo. Bauer	45
7	27997	C. F. Wessel	53.20
	28009	La Salle National Bank	5000
8		B. Carey	250
9		S. H. King	100
	28004	Henry Berger	100
5		Henry Berger	50
8		Duncan Campbell	1144.34
9	28015	Charles Werger	250
	28014	Isaac Holt	5000
11	28033	F. C. Haase	300
4		Martha Brahier	30
12	7	Henry Sarer	250
9		S. H. King	500
	28043	Mrs. E. M. Exley	100
14	28064	J. C. H. Ertes	50
15	5	Mrs. J. C. White	65
16	9	C. B. Lauridson	100
17	28077	Frank Newton	50
18	28081	Peter Pommer	500
19	5	Eugene Braher	100
21	28092	Julius Plantz	350
3		Cora L. Outcalt	250
4		Jno. Kensfater	100
8		Mrs. A. J. Elias	300
22	28104	Jno. Schuller	400
5		" "	500
7		Charles Hammond	1600
25	28115	S. H. King	100
	26156	Chas. Hammond	34.80
8		Sarah J. English	1000
	28121	A. Gantt	1000
2		Mrs. Fay	25
26	28134	Hy Scaer	50
5		Mrs. Susan M. Lane	95
	28129	J. Burrows	800
	28139	Rob't Weese	490
28	28142	Mrs. J. F. Moorey	600
3		L. M. Maxwell	10
6		Miss Mary A. Menlons	200
29	9	R. C. Outcalt, Cashier	100
	28150	Francis Spaulding	680
1		Rose Hannon	40
30	3	F. Newton	42
Dec. 1	28160	Sam Rich	75
1		Mrs. C. M. Aronson	80
3		A. E. Eastman	536.75
4		Mary Praarie	40

Date.	No.	To whom issued.	Amount.
1892.			
Dec. 2	7	C. F. Weese	50
	9	Rev. Kossick	150
	28170	Henry Townsen	26.25
3	1	Mamie Tippie	225
	2	R. H. Varney	150
5	28184	Carl Sack	300
	6	M. E. Johnson	50
	7	" " "	100
	28178	Samuel Roose	49
	9	Rev. Kiser	20
	28181	S. H. King	300
	3	C. P. Hill	200
824			
Dec. 6	28189	Theodore Kline	100
	28191	Humphrey Bros. Hdw. Co	2000
	2	Ambrose Kirkendall	216
	7	Fannie Fraut	475
7	28200	L. B. Kelley	210
	1	Tom Wasting	195
	2	P. J. Kennedy	2000
8	7	Louis G. Smith	925
	8	D. E. Bixby	225
10	28220	Henry Stein	250
	8	R. C. Outcalt	500
12	28230	George Bower	50
	1	Andy Bower	50
	4	S. Nooks	80
	6	A. M. Davis	2120
	8	C. A. Munford	150
	9	A. M. Davis & Son	3000
13	28241	Stephen S. Gardiner	1000
	6	Rob't H. Bear	40
	8	H. A. Moler	60
14	28250	Christ Daukers	400
	1	" "	100
	3	M[illegible]a C. Brunson	175
	5	Minn[illegible] Haase	100
	6	Mrs. Maggie Sullivan	400
	9	H. W. Hitchcock	1000
	28260	" " "	1000
	1	" " "	500
15	28225	A. Brown	7
	28266	Miss Cora L. Outcalt	200
16	9	Mrs. Lydia Greenman	600
	28270	" " "	500
	2	Ding Jang	600
	4	Thos. Buckley	100
	7	Daniel Buckley	300
	8	Mrs. J. W. Fay	30
17	28283	Donna A. Wilson	50
19	28294	J. H. Heasley	600
20	28303	W. C. Becton	60
	4	Chas. Werger	600
	6	Jno. E. Grover	25
21	9	Mrs. A. Rima	300
	28315	Charles Hammon	3500
	8	Mrs. Greenman	300
22	28329	Elias Lonsdale	500
	28330	Hanna Hilblink	555
23	3	A. Brown	10

Date.	No.	To whom issued.	Amount.
1892.			
Dec. 24	6	Mrs. A. L. Sherwood	1915
	8	W. S. Sanders	50
	28340	A. C. Schmidt	100
	1	Charles Scaley	405
	2	M. J. J. Cameron	30
	4	Luzia Diamond	1200
	5	Daniel Buckley	202
	6	W. J. Johnson	50
	7	Jno. Kinsfader	40
27	8	Thomas Henshave	100
	9	Susan Hege	25
	28350	Amanda Woods	80
825			
Dec. 27	28351	Indiana A. Falk	866.12
	2	A. Rima	200
	4	Jno. Weilenman	200
	28360	Eliza Dougherty	3000
	1	C. Uthe	20
	2	W. C. Hook	350
28	28371	Thos. Bailey	500
28	9	Amelia Brooks	60
	28372	Thomas Bailey	500
	28374	L. M. Gagen	250
29	7	S. H. King	300
	28382	W. C. Haqney	384
30	5	J. E. Hill	151
	6	L. Stacker	100
31	28390	Mrs. E. L. Knight	145
	4	Rev. B. Sprall	150
	8	J. C. Estes	25
	18401	Jno. Kane	100
	2	H. W. Hitchcock	100
	3	" " "	100
	4	" " "	100
	5	" " "	100
	6	" " "	100
	8	" " "	100
	9	" " "	100
	28410	Mrs. J. P. Sullivan	200
	1	Bertha Rorgan	140
	2	Wm. Johnson	155
Dec. 28	28373	Thos. Bailey	1000
826			
1893.			
Jan. 3	28413	Wm. Mills	70
	28418	A. M. Williams	200
	28423	J. S. Stohl	45
	28424	W. Kucera	100
	28425	Elizebeth Eshleman	155
	28428	Minnie Jor	50
	28430	May Keeland	75
	28431	Lucy Hoppe	100
	28432	Dora Warkaw	60
4	28433	Wm. Mills	60
	28434	Mrs. S. A. Jessup	24
	28435	Manot Auchew	150
	28436	" "	500
	28438	G. A. Southwell	80
	28439	F. G. Huber	20
	28440	Mrs. Lydia Yellsman	216.44
	28442	E. A. King	50
	3	T. E. Davis	410.44

Date.	No.	To whom issued.	Amount.
1893.			
Jan. 4	4	E. E. Squires	35
	5	C. F. Strodman	20
	6	Thos. Coffield	3000
	7	Eliza Lonsdell	1000
	9	M. Kossick	400
	28450	Mrs. Anna Kossick	200
	1	Rob't C. Druesdow	50
	2	M. Kossick	320
	6	R. W. Kiser	40
5	9	W. H. True	35
	28460	Henry Roder	200
	28461	O. H. Martin	35
	2	Helen A. Thrash	58.57
6	5	Rob't Druesdow	50
	6	Leopold Koffer	440
	8	M. Polsky	1043.60
	28474	J. W. Brown	160
	6	Mrs. M. R. Hevens	500
	7	Jno. A. Sittler	200
7	28483	Oscar Heath	26.85
	4	Susan Hedge	20
	7	M. C. Mairara	200
	8	A. M. Abbots	155
	28491	R. J. Cherey	100
	2	L. M. Puyse	10
9	4	C. W-the	8.25
	5	W. M. Sweeney	160
	6	W. J. Johnson	60
10	8	Lee Jessel	135.88
	9	R. W. Kiser	50
	28501	Jno. Danz	100
	2	Jas. R. Anderson	55
	4	W. C. Haynes	52.75
	5	S. J. Donnelly	650
	6	Laura Simmons	40
11	7	Rob't Druesedow	260
	8	James Berwold	125.00
	9	Martin Schwartz	100
	28512	Isiah Lindsey	10
	13	A. Brown	15
	15	Geo. Emery	30
12	16	C. J. Pettit	50
827			
1893.			
Jan. 12	28521	Frank Newton	47
13	22	Catherine Schroeder	100
	28522	Tillie Furst	100
	23	Jno. Blado	400
	24	Hans Hanson	231.06
	25	G. W. Landers	60
	26	Wm. Hinps	100
	27	Mrs. Hannah Lee	490
	28	F. G. Heber	45
	29	W. M. White	100
	30	Wm. Hinps	50
	31	Thos. N. Harrison	100
14	33	J. W. Hawey	25
	28541	Tillie Furst	100
	34	Mrs. L. H. Davis	15
	35	Bertha Eldenbary	495
	36	Mrs. C. M. Parke	50
	37	L. J. Roche	70
	44	H. C. Chaddock	10
	46	Humphrey Bros. Hdw. Co.	1500

Date.	No.	To whom issued.	Amount.
1893.			
Jan. 16	48	Charles Hammond	1.75
	49	W. H. Dinley	500
	50	S. Polwosky	1800
	51	E. Bloomgreen	25
	52	Anna Odman	100
	53	Harry Radford	100
	54	S. W. Wells	10
	55	Charles Talmage	50
	56	Rob't H. Bear	20
	57	H. R. Mober	50
17	59	George Smith H. A	100
	60	W. Sweeney	200
	61	Mrs. B. E. Johnson	25
	62	Ann Williams	20
	63	Wm. Leonard	1000
	64	Wm. Leonard	1000
	65	Wm. Leonard	420
	67	W. M. Frey	50
	68	C. F. Keich	44
	69	Rob't Smith	45
18	71	W. O. Hartquest	200
	73	T. L. Radford	37
	74	Mrs. C. N. Fogg	25
19	75	Samuel Linhart	70
	76	Mrs. A. P. Hernig	20
	77	S. H. King	100
	78	H. Horghinson	400
	80	Theo. Kline	80
	81	Adolf Biltoft	65
	83	Martin Werger	500
	84	Albert Heitzman	150
20	87	Rob't C. Druesedow	60
	28585	Charles Hammond	0.90
	90	Feton & Campbell	96
21	91	Collections	10000
	28594	Charles Hammond	200
	92	C. W. Mosher, Pt	2000
	93	Geo. Darton	25
	95	C. C. Waldo	400
	96	Rob't C. Druesedon	150
	97	Willard Hammond	3.25
	98	Fred B. Humphrey	214
	99	Chas. Werger	300
828			
Jan. 21	28600	Sarah A. Jessup	34.53
	1	Josephine Cline	10
	2	Geo. C. Baumann	350
	3	J. B. Stewart	450
	4	Katie Harman	40

829–863 Exhibits Nos. from 148 to 923½ inclusive separately and severally received in evidence and exhibited.

Mr. THOMAS: That is all with this witness for the present.

* * * * * * *

864 Mr. E. JACOBS being called as a witness on behalf of the plaintiffs and being first duly sworn testified as follows:—

Redirect examination.

By Mr. THOMAS:

Q. You may state your name and age?
A. E. Jacobs, age 46.
Q. You reside in Staplehurst in this county?
A. Yes sir.
Q. How long have you resided there?
A. About twenty years.
Q. What is your occupation?
A. Banking business.
Q. Since when?
A. Since 1886.
Q. With what bank have you been connected if any?
A. Bank of Staplehurst.
Q. One of the plaintiffs in these cases?
A. Yes sir.
Q. What official position if any have you held in that bank since 1886?
A. I have been Cashier and President of the bank.
Q. When were you Cashier?
A. From 1886 to 1894.
Q. And when have you been president?
A. From 1894 until now.
Q. You are the President of the bank now?
A. Yes sir.
Q. During the time you have been connected with the bank, since 1886 who has had the management of the affairs of the bank?
A. I have had the management from the beginning.

865 Q. Now you may state of the Bank of Staplehurst, while you have been its manager kept on deposit all moneys in the Capital National Bank of Lincoln?
A. Yes, sir.
Q. When did you first begin depositing money in that bank?
A. In 1886.
Q. And how long did you continue making deposits in that bank?
A. Until 1893, until the bank failed.
Q. You mean until the Capital National Bank failed?
A. Yes, sir.
Q. State whether or not you kept a continuous account with the bank from 1886 until its failure in 1893?
A. Yes, sir, we have done business there from 1886 until 1893 right along.
Q. Up until the failure of the bank?
A. Yes, sir, up until the failure of the bank.
Q. Who kept the books of the bank during 1886, that is of the bank of Staplehurst, and from then on until 1893?
A. I did.

Q. Have you the original books of entry with you showing your account with the Capital National Bank?

A. I have a part of them.

Q. Have you the book of original entry showing the amounts that were sent by your bank to the Capital National Bank?

A. Yes sir.

Q. The books of original entry?

A. Yes sir.

866 Q. Does that contain all amounts that were sent to the Capital National Bank and properly chargeable to that bank?

A. Yes sir.

Q. And have you the book in which is contained all credits to which the Capital National Bank was entitled in the course of your business transactions with it?

A. Yes sir.

Q. Are you able to state at this time how much money the bank of Staplehurst had on deposit in the Capital National Bank, and which the Capital National Bank was owing the bank of Staplehurst at the time of the suspension of the Capital National bank, January 21st, 1893?

A. It is about fourteen thousand dollars. I couldn't state the exact amount?

Q. Can you by refreshing your recollection from the books of the bank state the exact amount?

A. Yes sir.

Q. You may do so.

A. It was $14,264.33. There was a difference of 22¢ between the Receiver's books and ours. That was changed later on to correspond with the receiver's certificate. This shows 33¢ and the receiver's certificate called for 11¢.

Q. Is the amount which the Capital National Bank owed the bank of Staplehurst filed as a claim with the Receiver of the Capital National Bank?

867 A. Yes sir.

Q. Have you the Certificate of the Receiver allowing your claim the claim of the Bank of Staplehurst against the Capital National Bank?

A. Yes sir.

Q. With you?

A. No, I haven't got it with me.

Q. Do you know Mr. Jacobs who were some of the directors of the Capital National Bank during the time that the bank of Staplehurst kept an account with the Capital National Bank?

A. Yes sir.

868 Q. I will ask you to state if during that time that you on behalf of the bank of Staplehurst kept on deposit and deposited these various amounts, you saw any published statements of the condition of the Capital National Bank, stating its resources and liabilities?

A. Yes sir.

Q. When did you see those statements referred to?

A. I seen them every time there was a call made from the Comptroller to send in a bank stat-ment

Q. You may state to the jury fully what you did with reference to those reports as they came out.

A. Well that is the only source I had to see the standing of the bank and keep myself posted of its standing and liabilities.

Q. What did you do in order to keep yourself posted on its standing, that is the condition of the bank, as to its liabilities and whether it was flourishing?

A. I always looked up the statements when they were published, in the paper.

Q. You mean the published statements?

869 A. The published statements of the bank report.

Q. In what paper?

A. Well I couldn't remember.

Q. You may state whether you know whether or not you saw all of their statements that were published in the papers from the time you commenced doing business with the Capital National Bank until the time it suspended in January 1893?

A. As near as I remember I seen them all.

Q. What makes you think you saw them all?

A. I had to have a safe place to deposit the money and that is the only way I could keep myself posted as to the condition of that bank.

Q. During the time that the Bank of Staplehurst was doing business with the Capital National Bank in the way you have suggested did you see or read any of the Lincoln papers?

A. Well I have seen the Call and the Journal. The Evening Call.

Q. And did you see the notices of the condition of the Capital National Bank that were published in those papers?

A. As near as I remember I seen it in them papers.

Q. Did you see the notice of the condition of the Capital National Bank that were published in those paper-?

A. Yes sir.

Q. What was the Capital stock of your bank in 1886 and up to 1893?

870 Q. In what bank did you keep the bulk of the moneys that were not kept in your own bank in Staplehurst, that is I refer to the cash?

A. In the Capital National Bank.

Q. What other correspondent or bank with whom you made deposits did you have?

A. In the Chemical National Bank of New York.

871 Q. Had you any other correspondent?

A. No sir.

Q. Now I will ask you to state to the jury, how you came to make your deposits, I mean the deposits of the bank of Staplehurst in the Capital National Bank, and use them as your correspondent in Lincoln?

A. According to their published stat-ments the bank looked as if they was good business men running or overseeing the bank as directors.

Q. What reliance if any did you put in those published stat-ments that you saw in the newspapers?

872 —. I put full reliance and trusted them in good faith.

Q. Did you believe those published stat-ments to be true and correct?

A. Yes sir.

Q. Would you have made,——

Q. What effect did these published stat-ments have upon you, if any with reference to your transactions that is the transactions of the bank of Staplehurst, with the Capital National Bank?

873 A. I deposited the money of the bank there, and done my business there.

Q. Did those published stat-ments referred to effect you in any manner with reference to doing business there?

A. Yes sir.

Q. In what way?

874 A. I took confidence in that bank.

Q. By reason of what if anything.

A. The stat-ments showed up well.

Q. State what those stat-ments disclosed as to the solvency or the insolvency of the bank, or whether it was doing a good business or whether it wasn't.

875 Q. Did you at any time you did business with the Capital National Bank know of Mr. Yates, and Mr. Hamer and Mr. Walsh and Mr. Thompson, and Mr. Stuart, and these various parties who were directors of the Capital National Bank?

A. Yes sir.

Q. You may state what was their standing so far as you were advised and learned, as men of business affairs of honesty and integrity and men of ability to honestly and faithfully and successfully conduct and supervise an institution like this one, the Capital National Bank.

A. I have heard of them as being honest and successful business men.

Q. What reliance did you put in that fact if any?

A. Well any honest and successful business man will attend to the business he is running and overseeing.

Q. Had you heard of these men, these directors, that I have referred to, before in a business way, heard anything about them, their reputation?

A. Yes sir.

Q. I will ask you if you can give us a stat-ment Mr. Jacobs of the amounts that the Bank of Staplehurst had on deposit with the Capital National Bank on an average from the time you commenced depositing money there in 1886 until the date of its failure in January 1893.

A. I can by looking it up.

Q. How long would it take you to ascertain that? Mr. Jacobs were you in court when the copies of the Daily Call and State Journal which contained these published reports were introduced in evidence?

A. I was here yes sir.

876 Q. Now you may state if you saw those published stat-ments that were contained in those papers when the papers were,——

A. You mean here?

Q. No at the time the paper was published?

A. I did see the stat-ments, yes sir.

Q. Do you know how many there were published each year?

A. Five, as near as I can remember.

Q. Has any of this amount which the bank of Staplehurst had on deposit at the time the bank failed, been paid, if so state how much.

A. Yes sir, seventeen per cent. paid.

Q. By whom was that paid to the bank?

A. By the receiver of the bank.

Q. Can you give us the dates of those payments?

A. No sir.

877 Q. Do you mean seventeen per cent. of the balance, at the time of the failure?

A. Of the principal, of the total.

Mr. THOMAS: That is all.

Cross-examination.

By Mr. DEWEESE:

Q. What date was it that your account commenced in the Capital National Bank?

A. It was in February 1886.

Q. Was that the first time that you had any account there?

A. The first time I had an account there.

Q. That is the Bank of Staplehurst?

A. Yes sir.

Q. Did you start this bank of Staplehurst, or had it been running before?

A. It had been running before.

Q. By somebody else as owner?

A. Yes sir.

Q. Who was that?

A. Geary and Carmickle.

Q. And had they had their account there in the Capital National Bank?

A. Yes sir.

Q. How long had they had it there do you know?

A. About two months I think.

Q. Was that when they first started the bank?

A. Yes sir.

Q. Probably in November of 1885 then?

A. November or December of 1885.

Q. And then did you buy them out?

A. Yes sir.

878 Q. And you just continued the account right along?

A. Yes sir.

Q. And did you check out, take part of it out from time to time whenever you wanted to?
A. Yes sir.
Q. You drew drafts and checks on it?
A. Yes sir.
Q. And they were always honored and paid up to the time of failure were they?
A. Yes sir.
Q. Were you ever in Lincoln before you bought this bank of Staplehurst?
A. Yes sir.
Q. Did you have any personal acquaintance with the President, and Cashier of the bank?
A. No sir.
Q. Did you ever see Mosher?
A. I have seen him.
Q. Did you ever see Outcalt?
A. Yes sir.
Q. Before you bought into the bank at Staplehurst?
A. No sir.
Q. How long afterwards?
A. I couldn't tell you.
Q. Did you have any personal acquaintance with any of the Directors?
A. No sir.
Q. Did you ever look at the books to find out who were the Directors?
A. In their books of the Capital National Bank, you mean?
879 Q. Yes sir.
A. No sir.
Q. Who did you understand were directors when you bought the Bank of Staplehurst?
A. There was Thompson, Stuart, Yates, Hamer and I believe Holmes.
Q. Did you know any of these men personally?
A. No sir.
Q. Had no acquaintance with them?
A. No acquaintance at all with any of them.
Q. And did you ever talk to Mr. Mosher?
A. Yes I have once or twice, that is about all.
Q. About the bank in any way, about matters in the bank?
A. How do you mean?
Q. Well did you talk about religion, or politics, or banking business what was the subject that you talked about?
A. Well I had very little talk with him that I remember, I couldn't remember.
Q. You don't know what you talked about?
A. I couldn't remember, no sir.
Q. Did you have the conversation in his bank?
A. Yes sir.
Q. You continued your account right along?

A. Yes sir.
Q. Did you get any compensation, or interest for your deposit in the bank?
A. Yes sir, some.
Q. Do you know at what rate?
A. Couldn't remember no sir.
880 Q. Six per cent. wasn't it?
A. Well sir, I don't remember.
Q. Do you know what other banks were paying in Lincoln, or Omaha at that time?
A. No sir.
Q. What newspapers did you take in February, and from that time on in 1886, did you take any?
A. I couldn't remember what papers I did take at that time.
Q. Did you take the Lincoln Call?
A. No sir.
Q. Did you take the Lincoln Journal?
A. No sir.
Q. When did you see any of those papers?
A. They were kept there right along in Staplehurst.
Q. Who kept them ?
A. If I remember right it was Hartman & Dunn, they were kept mostly for the market, for the market reports.
Q. They wouldn't keep the Call for that would they, the Call didn't have the market reports in it, the Evening paper, the Call the Evening Call was an Evening paper.
A. Yes sir.
Q. And didn't have market reports.
A. I think it had the grain market in there.
Q. Do you really remember now that you did see the Call?
A. I did see the Call?
Q. What report did you see in the Call?
A. That I wouldn't state, I couldn't state that.
Q. Are you sure that you saw any of the bank report in it?
A. Yes sir.
Q. But you couldn't state which one?
A. No sir.
881 Q. You couldn't tell,—What month did you see it in?
A. I couldn't remember.
Q. Can you remember that you saw it in 1886 at all?
A. I couldn't tell.
Q. And do you remember that you saw the Lincoln Journal in 1886?
A. Couldn't say.
Q. If you didn't see either of those papers in 1886 then you did not see any of these reports did you?
A. All I can state is that I watched the reports, and seem them every time there was a call made, and that is all I could say. It is too long for me to remember particulars.
Q. How do you know that you saw them if you don't know whether you saw a paper in 1886.

A. Well that is all I could state, that I watched the statements and the reports and seem them, and that is all I could state.

Q. Was your bank a National Bank?

A. No sir.

Q. How did you know when the calls were made by the Comptroller for those reports?

A. It is generally stated in some paper or another.

Q. Now you are testifying as to facts, do you have any recollection of seeing anything about the Comptroller calling for a report from the Capital National Bank?

A. From banks in general that is all.

Q. Some published circular.

A. No sir, just a short sketch I seen in the paper, when the call was made by the Comptroller.

882 Q. Does the Comptroller make these calls by publication in the papers?

A. No sir, not that I know of.

Q. What would you see then?

A. It is just a short stat-ment in the paper, when there is a call made.

Q. A stat-ment for a report, signed by the Comptroller?

A. It is that there is a call made to make out the stat-ments that is about all that I have seen in it.

Q. Well if he wrote a letter to the Capital National Bank and asked them to make a report, you wouldn't be apt to see that letter, you don't mean that you saw that letter do you?

A. I——

Q. Do you mean to say that you saw something signed by the Comptroller?

A. No sir.

Q. What did you see?

—. I seen that in the paper, that is all, that there was a call made.

Q. Announced by the editor.

A. For them to make their stat-ments.

Q. Could you read English then?

A. Yes sir.

Q. And did you read the English newspapers?

A. Yes sir.

Q. What ones?

A. Well sir, I couldn't remember.

Q. Well how do you know that you ever saw any of these reports published in the Call. Can you really remember anything about seeing them?

883 A. I have seen the papers, yes sir, that is all.

Q. And you can't tell what year it was?

A. No sir.

Q. Nor what month it was?

A. No sir.

Q. And did you see the report called for as of date January 1st, 1887.

A. I couldn't remember any distinct dates.

Q. Well can you remember any report that you say, anw one?
A. No, sir.
Q. You can't remember any of them? Did you see more than one?
A. Yes sir.
Q. How many did you see now, speaking from your recollection, you might make a computation, or calculation, but do you remember of seeing more than one?
A. Yes sir, I remember. As near as I remember I have seen them all because that was what I was watching for, to keep myself posted to see their stat-ments.
Q. If you don't know how many were published, how do you know that you saw them all?
A. I have seen them all as near as I can remember.
Q. Where were you when you saw one of them?
A. I don't know.
Q. You can't remember where you were when you saw any one of them?
A. No sir.
Q. You don't remember the incident, you don't remember the fact really of seeing one of them at all.
A. I have seen them all.
884 Q. All that you can say is that you have seen them all, but you can't locate any place that you saw one of them.
A. No sir.
Q. Nor when you saw any one of them.
A. No sir.
Q. You wasn't a subscriber of either one of those papers?
A. No sir.
Q. You didn't take any of those home and keep them there?
A. No sir.
Q. And didn't take them and keep them in your bank?
A. Well I did have some in the bank, yes sir.
Q. When was that?
A. I couldn't remember.
Q. And have you got them now?
A. No sir.
Q. What did you do with them?
A. Them what I kept, as near as I can remember, I handed them to Biggs and Thomas.
Q. The newspapers?
A. No just the statements.
Q. Do you know what statements you handed to them?
A. Couldn't tell couldn't remember.
Q. Can you pick out any one of these reports now, can you name any one of them, or give any date to any one of them that you saw?
A. No sir, I couldn't.
Q. And you don't know who signed any one of them do you?
A. I remember the names yes sir.
Q. Tell me the names that were signed to one of them?

885 A. D. E. Thompson, Stuart, Hamer and Yates. I think I have seen Holmes name on too.

Q. On one report?

A. No I wouldn't say that, but I have seen them names on the several reports?

Q. You are sure of that are you?

A. Yes sir.

Q. See anybody's else name?

A. I have seen Mosher's and Outcalt's.

Q. Can you point out anything that is written in any one of those statements?

A. Not as I remember.

Q. As far as you know the statements were alright?

A. Yes sir.

Q. You were better acquainted with Mosher than any of the rest of the people with the bank?

A. I couldn't say that I was, I don't suppose I would know him by sight today.

Q. Who was it you say you bought out?

A. Carmickle and Geary.

Q. Edwin Geary?

A. Yes sir.

Q. He lives in Cass county, Nebraska down here?

A. I don't know where he is.

Q. Did you make any inquiry of them about continuing your account in the Capital National Bank?

A. No sir.

Q. How did you know that their account was kept there when you bought in?

A. The books showed it.

886 Q. And did you make any further inquiry about the matter, or inquire of anybody about continuing your account there?

A. I did in a general way.

Q. Who did you talk to?

A. I couldn't remember now. I have heard about the standing of the people, that is about as far as I remember just now.

Q. From business men in Staplehurst?

A. No sir.

Q. In Lincoln?

A. In Lincoln.

Q. When you went to Lincoln did you make inquiry of people there?

A. I did.

Q. Were you acquainted with anybody in Lincoln?

A. Yes sir.

Q. Did Geary live there then?

A. No I didn't take any stock in Geary.

Q. He went to Cass county.

A. I don't know where he went, he left in a hurry.

Q. Did you find his bank, you didn't find any trouble in his bank did you?
A. Yes sir.
Q. After you bought it you ran your bank straight of course?
A. The best I could yes sir, the best I understood it.
Q. From what you learned by inquiry and what you learned of the standing of the officers and directors of the Capital National Bank everything seemed to be favorable, did it?
A. Yes sir.
887 Q. You didn't change your account to any other place?
A. No sir.
Q. Just continued it right on where your predecessor had started.
A. Yes sir.
Q. Now when you first went into the bank who was the President of your bank?
A. Mr. Jorganson.
Q. And you were Cashier?
A. Yes sir.
Q. And you kept the books?
A. Yes sir.
Q. And you did the corresponding back and forth, with other banks?
A. Yes sir.
Q. And the Capital National Bank. And when you wanted to draw money from there you would write out drafts and write the letters and receive responses etc., in your position as Cashier?
A. Yes sir.
Q. And you remained Cashier,—in that work there until 1893 until you became President?
A. No it was in 1894 when I became President.
Q. When you saw one of these statements, if you can remember any particular time, did you find that the liabilities of the bank on one side were as great as the assets on the other.
A. I couldn't remember any particular statement at all.
Q. Then you couldn't remember whether the liabilities were as much on one side of the statement, the debit side, as the assets were on the credit side?
A. I wouldn't state anything from memory that way.
Q. You couldn't remember whether two sides of the account seemed to balance or not?
888 A. Why they naturally would.
Q. Well they wouldn't have to, if they didn't would they?
A. No, but then,——
Q. Do you remember, do you have any recollection of whether they did or not?
A. Yes sir they did.
Q. Are you speaking that because you say they have to, or do you remember that they did?
A. I remember they did, or else I would have noticed that.
Q. Now since you remember that, do you remember where you were when you saw that?

A. No sir.
Q. And you don't know when it was?
A. No sir.
Q. You don't mean to say that H. J. Walsh was a director, do you?
A. If I remember right he was Vice President at one time.
Q. Do you remember the amount in money that you have received on this account?
A. On this account?
Q. Yes, this account that you are suing for here?
A. You mean from the Receiver?
Q. Yes, or any other source.
A. It was seventeen per cent. of the total.
Q. Do you remember the amount?
A. No sir. I could soon tell. $14,264.11 is the total debt, or claim.

Mr. DEWEESE: That is all.

889 Cross-examination.

By Mr. WHEDON:

Q. Couldn't you tell what interest you got from the Capital National Bank Mr. Jacobs?
A. I couldn't remember.
Q. Won't your books show?
A. I don't know.
Q. Just look at that and find it please.
A. If it was, it was turned in the earnings and profits, there was no separate item of it, I remember that, but the statement of the bank would show it.
Q. Won't your books show what rate of interest you got from the Capital National Bank, on your deposits?
A. No sir.
Q. Did you get eight per cent.?
A. I don't remember what I got.
Q. Did you ever get as much as eight per cent.?
A. Not as I remember.
Q. Seven?
A. I couldn't remember.
Q. What would you say would be your best recollection, that you did not get that?
A. I got some.
Q. What is your best recollection did you ever get as much as seven per cent.?
A. Not as I remember.
Q. Did you ever get as much as six?
A. I couldn't remember.
890 Q. Did you get interest on your money that you had on deposit in the Chemical National?
A. No sir.
Q. But you did get interests on deposits in the Capital National?

A. We got some there, yes sir.
Q. Was that on your Daily Balance or monthly balance?
A. I know it was added up when we had the monthly statement between each other.
Q. Have you got those monthly statements?
A. Not here, no sir.
Q. Have you got them at the bank?
A. I believe so.
Q. Then can you refresh your recollection so that you can state what rate of interest you got, from these statements.
A. I could, yes.
Q. I wish you would do that.
A. Yes sir.
Q. You say you saw the call that was published?
A. Yes sir.
Q. How many of those calls did you see each year, do you remember?
A. I wouldn't state for certain, I believe five.
Q. Those were signed by the Comptroller, these calls?
A. No.
Q. Who were they signed by?
A. They were just short statements in the paper, that there was a call made, as near as I can remember.
Q. What paper did you see that in?
A. I couldn't remember.
891 Q. What paper was taken in the bank?
A. I just seen that now, when I took this book, just like I showed you a moment ago, we got the World Herald, November 15th.
Q. Then the World Herald was the paper that was taken in the bank?
A. Part of the time, I wouldn't say how long.
Q. How long would you say that paper was taken?
A. I couldn't tell.
Q. That was the only paper that was taken in the bank was that, World Herald?
A. Yes sir, the World Herald.
Q. Now you say these statements that you saw showed the bank alright and safe?
A. Yes sir.
Q. Did that statement purport to give the amount of assets and recources of the bank, of the Capital National Bank?
A. The published statement?
Q. Yes sir.
A. Yes sir.
Q. Did it give their value?
A. The value of the resources?
Q. Yes sir.
A. Just the amount.
Q. That was money and resources. Did it give the amount of notes that it held, did it?

A. Yes sir.
Q. Did not purport to give their value?
A. No sir.
Q. And do you remember whether among the resources it gave the taxes paid, the amount of taxes paid?
A. I haven't paid much attention to that.
892 Q. Didn't read these statements very carefully?
A. Yes sir.
Q. But you don't remember what they contained.
A. I don't remember the separate items no sir.
Q. Do you remember any other items than the amount of discounts?
A. Loans and discounts, not any certain items, no sir.
Q. Nor their value. You don't remember any other items than loans and discounts?
A. I know there was other items stated, but I couldn't tell the amount of any of them.
Q. Now do you remember whether these reports that were made were all made on the same form, those reports that you say?
A. Nearly, I think.
Q. Practically all on the same form.
A. Yes sir.
Q. You couldn't tell how many you saw?
A. No sir.
Q. Nor when you saw them?
A. Not the correct time, no sir.
Q. The only items that you can give would be the loans and discounts?
A. I don't remember the amount either, no sir.
Q. You remember the fact that it did give them, don't you?
A. I remember that it gave all of the different items, what a statement like that should contain.
Q. Well what would they?
A. Well I don't remember the different amounts.
Q. I didn't ask for the amounts, I asked if you remember the different items?
A. What they were called.
893 Q. Yes sir.
A. Loans and Discounts, or Bills Receivable or whatever,—Loans and Discounts I guess they were called mostly. Then the amount "due from banks" Capital Stock. Cash on hand, were most of the items of resources.
Q. Those were most of the items of resources as you recollect them now?
A. Yes sir.

Mr. WHEDON: I guess that is all.

Redirect examination.

By Mr. THOMAS:

Q. During the time that you have been engaged in the banking business have you been engaged in any other business?

A. Yes sir.
Q. What other business?
A. I have been in the grain business, right along, and part of the time in the stock business, shipping hogs.
Q. Who have you been associated with in that business?
A. In the grain business I have been associated with P. C. Nelson, and in the stock business with Hartman & Dunn.
Q. And you may state if they took these Lincoln papers you spoke of during the time you have been in the banking business?
A. Hartman & Dun as near as I can remember took them.
Q. And did you see the papers they took?
A. I have seen the papers yes sir, the statements.
Q. What do you refer to as the notice of the Comptroller calling for these statements, do you refer to a news item, or dispatch published in the paper announcing that such a call had been
894 made or is it the formal call that the Comptroller signed?
A. It was just the news item.
Q. Now you spoke of having kept some of those statements that were in the papers, what did you do with those?
A. I turned them over to Biggs & Thomas.
Q. Which one of the firm of Biggs & Thomas?
A. Biggs.
Q. Do you remember how long ago that has been?
A. No I don't.
895 Q. With reference to the commencement of this suit, was it before or after?
A. It was after the commencement of this suit.
Q. How long, about?
A. Shortly after, I couldn't tell the time.
Q. And do you know if Mr. Biggs is alive?
A. Yes sir.
Q. You may state whether or not he is alive?
A. He is not alive now.
Q. How long has Mr. Biggs been dead?
A. I don't know.
Q. About two or three years?
A. About two years I think.
Q. And have you seen these published statements since you delivered them to him?
A. No sir.
Q. Did you have any other statements of any kind that were sent you by the bank?
A. They sent our printed cards with a short cut of the statement on them.
896 Q. Did you keep those cards and file them away?
A. I did some, as near as I remember.
Q. Where did you put them?
A. They went with Mr. Biggs I guess.
Q. Did you keep any that Mr. Biggs did not get?
A. No sir not that I remember.

Q. Did you have any statements that you kept at the bank other than what you sent to Mr. Biggs?

A. No sir I think he got everything that he thought of any value.

Q. Were there any statements of any kind at the bank at the time your safe was blown up by burglars?

A. I think not.

Q. Now who was Vice President of the bank at the time you commenced doing business in 1886, that is the Capital National Bank?

A. If I remember right it was Mr. Walsh.

Q. H. J. Walsh?

A. I don't remember the initials.

Q. And who was Vice President at the time the bank failed?

A. I think it was Walsh.

Q. And was there anyone else Vice President of the bank during the time that the Bank of Staplehurst kept an account with the Capital National Bank?

A. I don't remember.

Q. Do you remember any one else being Vice President than Mr. Walsh during that period?

A. No sir.

897 Witness JACOBS recalled for further direct examination.

By Mr. THOMAS:

Q. Mr. Jacobs are you able to state the amount of money that the Capital National Bank owed to the Bank of Staplehurst, that is that was on deposit with it at the different times, say each month from the time in February 1886 that you commenced making deposits there, until the failure of the Capital National Bank?

A. Yes sir.

Q. Have you prepared a schedule from your books of original entry which will show correctly the amounts of money which the bank of Staplehurst had deposited in the Capital National Bank at or about the first of each month during the period heretofore referred to?

A. Yes sir.

Q. Will you produce that statement?

(Witness complies.)

Q. Is Exhibit No. 1051 which I hand you a true and correct statement compiled from your books of original entry showing the balances which the Bank of Staplehurst had on deposit in the Capital National Bank on the dates indicated on this statement, and as referred to in your former answer?

A. Yes sir.

Mr. THOMAS: We offer in evidence Exhibit No. 1051.

		Total.	Average.
1886.			
M'rch 1	426.12		
Apr. 1	816.62		
May 1	1235.84		
June 1	6385.14		
July 1	1181.56		
Aug. 2	2361.60		
Sept. 1	1837.89		
Oct. 1	230.67		
Nov. 1	630.28		
Dec. 1	477.84		
		15573.56	1557.35
1887.			
Jan. 1	1192.39		
Feb. 1	1908.62		
M'rch 1	889.84		
Apr. 1	1805.04		
May 2	583.44		
June 2	2777.05		
July 2	3816.22		
Aug. 2	6808.94		
Sept. 2	5252.52		
Oct. 1	1438.53		
Nov. 1	638.18		
Dec. 2	1835.76		
		28946.53	2412.21
1888.			
Jan. 2	1274.94		
Feb. 1	1514.04		
M'rch 2	2284.07		
Apr. 4	2824.72		
May 2	2009.35		
June 2	3522.96		
July 5	10343.47		
Aug. 2	13141.78		
Sept. 3	7720.28		
Oct. 2	7214.81		
Nov. 2	3571.74		
Dec. 1	3009.97		
		58432.13	4869.34
1889.			
Jan. 2	1038.79		
Feb. 2	1853.28		
M'rch 1	407.92		
Apr. 2		(Short 49.61)	
May 2	1230.36		
June 3	1372.21		
July 2	4915.46		
Aug. 2	2080.87		
Sept. 4	608.43		
Oct. 2	657.51		
Nov. 5	283.88		
Dec. 3	579.07		
		15627.78	1298.31
		49.61	
		15678.17	10137.21

1890.				10137.21
Jan. 2	286.25			
Feb. 3	1535.48			
Mch. 3	337.82			
Apr. 2	1677.98			
May 2	4002.93			
June 3	6474.20			
July 3	12320.94			
Aug. 2	12997.15			
Sep. 2	9289.47			
Oct. 2	3215.98			
Nov. 3	1409.65			
			53517.88	
Dec. 2		(29.97)		4469.80
1891.				
Jan. 3	273.42			
Feb. 3	1451.06			
Mch. 3	813.19			
Apr. 1	1312.54			
May 2	919.49			
June 1	7907.09			
July 2	6375.51			
Aug. 1	5698.92			
Sept. 2	1752.20			
Oct. 1	794.87			
Nov. 2	296.22			
Dec. 1	771.33			
			28665.84	2388.82
1892.				
Jan. 2	3267.59			
Feb. 1	6175.69			
Mch. 1	3818.81			
Apr. 1	4691.84			
May 2	1654.86			
Jun- 1	10111.35			
July 1	17856.88			
Aug. 1	13605.71			
Sep. 1	12085.96			
Oct. 1	10858.96			
Nov. 1	6280.89			
Dec. 1	5328.79			
1893.				
Jan. 2	4487.65			
Jan. 21	14264.11			
			114461.98	8175.84
			Average.....	3595.95

Q. Now I will ask you to state if you have compiled or prepared an abstract or statement, taken from your books of original entry which are in court, showing the amounts which the Bank of Staunton had on deposit with the Capital National Bank of Lincoln from January 2nd to January 24th, 1893?

899

A. Yes sir.

Q. Is Exhibit No. 1052 which I hand you that statement or schedule?

A. Yes sir.

Q. Is that a correct statement of the Daily Balances?

A. Yes sir.

Mr. THOMAS: We offer in evidence Exhibit No. 1052.

Q. Now I will ask you to explain Mr. Jacobs how it comes that there are entries under date of January 24th 1893?

A. That is the last settlement with the Capital National Bank after its failure.

Q. How does it come that the balances as shown by this Schedule under date of January 21st 1893 does not show the correct balance which was due the bank of Staplehurst from the Capital National Bank?

A. The difference is in that statement.

Q. You may explain that any way whatever it may be.

A. Their books showed that they had transferred $3,000.00 to New York which we had ordered previously, but it was not sent.

Mr. DEWEESE: Whose books showed that?

A. Our books and so do the Capital National Bank's books, the statement they sent us, the first statement. This is a correct statement by the Receiver.

Q. Now you may state what you did, if you ordered any money transferred?

A. I ordered three thousand dollars transferred to the Chemical National Bank of New York.

Q. When?

A. On January 16th, 1893, we had one thousand dollars transferred.

900 Q. You mean you had it transferred or ordered it transferred?

A. On January 18th one thousand dollars and on January 19th one thousand dollars?

Q. You mean you had it transferred or ordered it transferred?

A. We ordered it transferred, and they charged us up with those amounts, but they never transferred it. We didn't have no credits for them amounts in New York in the Chemical National Bank.

Q. At the time you ordered it transferred, did you give a credit on your books for that amount,—at the time you ordered the Capital National Bank to forward three thousand dollars to the Chemical National Bank of New York, did you give the Capital National Bank credit on your books for the amount you ordered transferred?

A. We charged the Chemical National, and gave the Capital National credit for them amounts.

Q. And subsequently you learned that the amount had not been transferred?

A. Had not been transferred, but had been charged against our account.

Q. Where?

A. In the Capital National Bank.

Q. I hand you Mr. Jacobs, the published notices which have been introduced in evidence, and will ask you to state whether or not these are the notices that you saw which you have referred to in your preceding testimony?

901 Q. You were present were you when the newspapers containing the notices or published notices of the report of the condition of the Capital National Bank were introduced in evidence?

A. Yes sir.

Q. Now I will ask you to state if you saw the notices that were printed in those newspapers at the time the papers were issued, the files of which were introduced in evidence in this case.

902 A. Yes sir.

Q. Now I will ask you to state what other sources of information you had other than these published reports, from which you could or did ascertain the condition of the Capital National Bank.

903–910 A. I had no other source.

Q. What information or belief did you have with reference to the financial condition of the Capital National Bank, and where was that acquired?

Q. Did you know Mr. Jacobs at any time the Bank of Staplehurst was depositing its money in the Capital National Bank, that the reports of the financial condition of the Capital National Bank as published by its officers did not correctly state the amount of Certificates of Deposit that were outstanding?

* * * * * * *

911 Q. I will ask you to state Mr. Jacobs if you had any knowledge as to the value of the assets published in these various reports, except as shown by the reports themselves.

912 A. I had no knowledge whatever, only what I gained from the published statements.

Q. Did you have any knowledge of any irregularities, if any there were in the management of the business of the Capital National Bank?

A. If I had any knowledge of any single one of these fraudulent items I would have withdrawn every cent of money as fast as I could from the Capital National Bank.

913 Mr. THOMAS: That is all.

(By Mr. WHEDON:)

Q. Did you get the rate of interest that you received?

A. I found one item, if you want to look at it. I looked that up last night.

Q. Well what rate of interest were you receiving?

A. This is all that I could find of the interest that I received from the Capital National Bank, $22.81.

Q. I will ask you what rate of interest you were receiving on your deposits?

A. I don't remember that I got any specific rate.

Q. You can't tell any more about it than you could yesterday?
A. No sir, not a bit.

Further cross-examination.

By Mr. DEWEESE:

Q. Mr. Jacobs on or prior to December 2nd, 1890 you had checked all of your money out of the Capital National Bank, had you not?
A. Yes sir.
Q. What is the first day that you had checked it all out prior to that?
A. I couldn't remember unless I looked it up, if we have at all.
914 Q. And you checked out all of your deposits and borrowed some besides?
A. Yes sir.
Q. And later on you deposited some more?
A. Yes sir.
Q. Don't you remember that on January 24th, 1890 you had checked out all of your money and had an overdraft there, that is you owed the bank some money, $62.85?
A. January 24th, Well I have got under date of the 22nd, we haven't got any overdrafts according to our books at all during that time. Yes sir, I have got January 22nd to 25th.
Q. Well during some of those dates, of course the date might not agree, between your books and theirs, what was your balance on January 22nd, 1890?
—. January 22nd, $79.54.
Q. And on January 23rd didn't you draw $112.50?
A. I couldn't tell by this book.
Q. And in the meantime you have made no ddeposit?
A. I couldn't tell unless I would look it up.
Q. That might be true?
A. That might be true.
Q. And it might be true that you drew out all at several times during 1886, 1887 and 1888 any one of those years.
A. Yes sir.
Q. In reference to your testimony this morning, do you mean to have it understood that you didn't tell the facts yesterday?
915 A. In what respect?
Q. In any respect.
A. Why I told them as near as I knew how.
Q. And what you stated yesterday was the truth as you understood it was it?
A. Yes sir.
Q. You still stick to it?
A. Yes sir.

Mr. DEWEESE: That is all.

(By Mr. THOMAS:)

Q. You may state what was the nature of your transactions withe the Capital National Bank of Lincoln, speaking as a banker?

A. In remitting money for deposits, and drawing on our account there by drafts.
Q. You issued drafts?
A. We issued drafts against our account.
Q. And was running an open account from day to day?
A. Yes sir.
Q. Were they what is known as your Lincoln correspondent?
916 A. Yes sir.
Q. I will ask you to state Mr. Jacobs the dates and the amounts of the dividends which you received, which you testified to yesterday, from the Receiver of the Capital National Bank, on the amount which that bank owed you at the time of its suspension.
A. It was received September 7th, 1893..... $1426.41
April 25th, 1894..... 713.20
February 1st, 1902..... 285.28

Mr. THOMAS: That is all.
Witness excused.

THOMAS BAILEY being called as a witness on behalf of the plaintiffs and being first duly sworn testified as follows:

Direct examination.

By Mr. R. S. NORVAL:

Q. Where do you reside?
A. Pleasant Dale, Seward County, Nebraska.
Q. How long have you resided in this county?
A. Since some time in 1869.
Q. You may state if you had any transactions with the Capital National Bank of Lincoln, Nebraska at any time in the year 1892?
A. Yes sir.
Q. You may state what they were?
A. Well I think it was in October 1892 I gave them a certificate of deposit from the First National Bank of Lincoln, Nebraska.
917 Q. What do you mean by giving them a certificate, did you make a donation to them?
A. No.
Q. Tell what your transaction was.
A. In the first place I went to the bank to see what interest they were paying before I took this out. I received notice from the First National that they wouldn't only give me five per cent. interest, and I thought this Capital National Bank was as good as the First, and they offered me six, and the consequence was I just signed the certificate of deposit over to them, and they gave me their certificate for it.
Q. Have you got the date of that?
A. I believe I have.

Q. Have you any memorandum by which you can refresh your memory?

A. October the 11th, 1892.

Q. Well how much was that?

A. Ten thousand dollars, I deposited there that day.

Q. And when did you have any other transaction with the bank, with reference to the matters involved in this suit, if any?

A. Well I deposited some more in December, December 28th, 1892.

Q. How much?

A. I think it was $2,000.00 I don't remember the exact amount.

Q. Now how many transaction did you have with the bank?

A. I think that was about all that I can remember. I drew Five Hundred dollars out January 19th, 1893.

Q. Well now you may state how you came to do business with the Capital National Bank instead of the First National Bank.

918 A. The reason was the First National, as I stated before they only wanted to give me five per cent. on my money, and I went down to the Capital National and they offered me six.

Q. How did you come to go to the Capital National Bank?

A. I went on purpose to see what they would pay on the money. And I thought it was just as good as the First National.

Q. What information did you have as to the condition of the Capital National bank?

A. As soon as I went in they handed me a card and the Directors and stockholders of the bank were on that card. And I took the papers several years previous.

Q. What papers?

A. The Semi-weekly Journal, I believe, and the Call.

Q. State what you saw in them if anything.

A. I supposed it was as good as I could do.

Q. What did you see?

A. I saw that the bank was in pretty good circumstances, as I supposed the way the amount of assets read in the published stat-ments.

Q. Well now what did you read in those papers, published stat-ments?

A. Yes in the published stat-ments in the paper.

Q. Of what bank?

A. The Capital National of Lincoln, Nebraska.

Q. You say they gave you a card of the bank on which the officers names and directors appeared?

A. Yes as soon as I come into the bank, and told them I had some money, I had in the First National Bank, and they offered me six per cent. and I thought they were just as good as the other, and I thought I would like it.

919 Q. How long before you went over to transact your business with the Capital National Bank had you read these stat-ments?

(Question withdrawn.)

Q. State when it was with reference to the time,——

A. I suppose ever since the bank started, for I read the papers every day and took particular notice. I had some money to loan out and I took a little notice where I thought was the best place to put it.

Q. And what reliance did you make if any upon these stat--ments?

A. Well that was all the reliance I had was what I could get information in the papers in regard to the standing of the bank.

Q. State what information if any, you had other than what was disclosed in the stat-ments that were published.

A. That is all the information I had. Then I knew some of the officers and I thought they was good business men.

920 Q. You knew some of the directors?

A. Yes sir.

Q. What ones?

A. I knowed Walsh.

Q. And did you know any of the others?

A. I knowed two or three of them personally. I knowed Mr. Mosher and Outcalt, and I knowed Mr. Stuart well.

Q. And did you know who were the directors of the bank as shown by their advertis-ments and card?

A. I knowed the balance by reputation.

Q. Well who were they?

A. They had Stuart, Holmes, Mr. Thompson, Hamer, Phillips, Yates and Mr. Mosher and Outcalt, was Cashier. I have known him ever since he has been in the state. I did business with him when Sweet & Brock was running a bank there?

Q. You may state Mr. Bailey if you knew anything about the condition of the bank except as was disclosed by the published stat--ments?

Q. You may state where you got your information as to the condition of this bank.

921 A. I got it out of the published stat-ments.

Q. And from any other source?

A. No sir I had no other source to get it from.

Q. You may state Mr. Bailey whether or not you would have deposited your money and transacted your business there at this bank except upon the stat-ments that you had seen and read.

922 Q. State what inducements were made and all of them that were made in order to induce you to transact your business with this bank.

A. The inducements was that they would give me one per cent. more than the First National Bank, and I thought it was just as good as where I had it, and I was getting more interest on my money.

Q. Was that all that induced you to transact your business there or was there any stat-ments made?

A. All the stat-ments that was made I read in the papers.

Q. Now which did you rely upon, the——

Q. You may state what effect those published stat-ments had

upon your transacting business with the Capital National Bank if any.

923 A. Why that is all the effect I had to go by was the published stat-ment, supposing it was to be true and correct.

Q. Did you believe it to be true?

A. I believed it to be true or I wouldn't have put my money there. I would have kept it where it was.

Q. How did you know now the reputation of these directors?

A. Well I had heard they was good men,—I knowed some of them to be good business men.

Q. Men of wealth and business sagacity?

A. Men of wealth, yes sir.

Q. How much have you received upon your indebtedness against the bank?

A. Why I think seventeen per cent.

Q. When did you receive it?

A. I received ten per cent. September 7th, 1893.

COURT: How much money?

A. It would be on $11,500. I haven't got the amount here.

Q. What was the next amount and date?

A. The next was April 26th, in 1894, 5%. And two per cent. dividend I got this year,—I don't know what day it was.

924 Q. Now you may state if you knew at any time, or had any means of knowing that the Capital National Bank was not being properly conducted, and was not financially in the condition as represented by its stat-ments?

A. I had no means of knowing.

Q. Well did you have any knowledge?

A. I had no knowledge.

Q. Did you have any knowledge that the assets of the bank were not as large as represented in its stat-ments?

A. No sir I had no means of knowing.

Q. Did you have any knowledge as to whether or not its liabilities were much greater than stated in its stat-ments.

925 A. Why no sir, I had no means of knowing.

Q. Now with reference to these report-, how many did you see, as to the condition of the bank, say two years before you commenced doing business there?

A. Why I used to read the papers regularly. When ever they would come out, about every two or three months, about four or five a year. There would be in all of the banks, I wasn't particular about that bank, but all of the banks in Lincoln, I had money there and it was to my interest to see how the published stat-ment was.

926 Q. For how many years did you read these published stat-ments?

A. Well I couldn't say that.

Q. Well about how many?

A. Oh probably ever since the bank started, I have been reading the papers every day.

Q. You took the papers right along, the Journal and Call?
A. Yes sir.
Q. Do you remember of any other directors names that were signed to these reports that you read?
A. Yes sir.
Q. Give the names.
A. Why, Mr. A. P. S. Stuart, he was one, and Holmes, I knew both of them. Hamer and Phillips and Yates, Mosher and Outcalt and Mr. Thompson's names were there. Outcalt was the Cashier of the bank.
Q. Well do you remember now in these stat-ments what was published in the stat-ments?
A. I remember they made a very good showing, it appears that the assets was about a million.
927 Q. How many of those stat-ments do you say you read every year?
A. I used to take the paper regular.
Q. How many of these stat-ments of the Capital National Bank was it you read every year?
A. I would read them all, all that was out, four or five a year.
Q. And did you read them before or after your made your deposits of this money?
A. Before. They wasn't only one stat-ment made after I put my money in there.
928 Q. Well did you read the stat-ments that had been made prior to the time that you put your money in there?
Q. State what belief if any, you put in those stat-ments prior to the time you deposited your money in the bank.
A. I believed the stat-ments to be true, or I never would have put my money in the bank, that is sure. I didn't suppose they were going to rob me out of it, or I wouldn't have put it there.

Mr. THOMAS: That is all.

929 Cross-examination.

By Mr. DEWEESE:

Q. You live at a town over near Lincoln?
A. Pleasant Dale, about thirteen miles west of Lincoln.
Q. Lincoln was your trading place, largely?
A. I was there generally nearly every day.
Q. And you became familiar with the business men and the bank etc. there where you dealt?
A. Yes sir.
Q. How long had you been loaning your money, or keeping it with the First National Bank?
A. About,—I couldn't tell you exactly but when the Capital National,—you see they consolidated with the First National and when they consolidated, they just took my money over there.
Q. The First National was Brock's.
A. It was Richard's—I used to keep money in the State Bank, that was Richards and Brocks. I forget what the name of the Bank was, I think it was the Lincoln National.

Q. When the First National was started?

A. The First National started,—they consolidated the First National bought the Lincoln National out, the way I understood it, when they bought it out, I took my money right over there.

Q. Over to the First National.

A. Yes sir.

930 Q. And that was about how many years prior to 1892?

A. Several, one two or three, I don't think it was very many. I have a record of it, but I haven't it here.

Q. And you kept your money in that bank, and held the evidence of your deposit in the shape of a Certificate of Deposit.

A. I did in the First National. I had some in the Columbia and I took that over to the First National.

Q. I am talking about your deposit in the First National, you held a Certificate of Deposit?

A. Yes sir.

Q. And that certificate drew how much interest you say?

A. Six per cent.

Q. In the First National?

A. Yes sir.

Q. And how long did it run there at six per cent.?

A. I don't remember. As long as it was in there. And they notified me that they could only pay me five.

Q. And then what did you do?

A. Then I drew it out and took it to the Capital National Bank.

Q. And if they had continued to pay you six you would have left it there?

A. Probably I would.

Q. But when they said they couldn't pay you but five, then did you first go over to the Capital National bank to find out,——

A. Yes sir.

931 Q. What did you find out.

A. That they would give me six per cent.

Q. Suppose they had said they would give you but five, would you have changed?

A. I don't know that I would.

Q. But when they raised the amount to six, you took it over.

A. Yes sir.

Q. And when you went over there to inquire, to see how much interest you could get, you say they gave you a card?

A. Yes sir.

Q. And that card had on it what?

A. The Directors.

Q. The names of the President Cashier and Directors.

A. Yes sir, I forget just exactly what was on it now, but it showed pretty good.

Q. Who did you see there?

A. I saw some of the clerks.

Q. Who gave you the card?

A. I don't know who he was, he was one of the clerks, tall slim fellow, kind of a wiggley fellow.

Q. Young?
A. I think that was his name.
Q. He was a fellow that wiggled anyhow?
A. Yes sir.
Q. He was a clerk in the bank?
A. I think he was, he was in there. There were several of them there. Outcalt wasn't there or I would have talked to him.
Q. You knew Mosher pretty well?
A. No I didn't know Mosher very well, but I had known Dick Outcalt for years.
932 Q. But Stuart was your special acquaintance?
A. Yes sir.
Q. He was a wealthy man and a pretty good financier?
A. He always appeared to be of that reputation.
Q. Everybody had confidence in the bank there?
A. Why they did.
Q. And in Mosher and Outcalt?
A. I talked to several outside people and they all appeared to have good confidence in the Capital National Bank.
Q. And in its officers and the men connected with it.
A. And in the men connected with it, yes sir.
Q. And there was no bank in Lincoln, or in the state that you knew of, that stood higher in the general estimation that it.
A. Not in my own mind according to their stat-ment. I don't think there was any in Lincoln anyway.
Q. When your money was in the First National bank, you say you noticed what was published about the banks because you had some money invested in the First National Bank?
A. How was that?
Q. When your money was in the First National bank, you say you noticed what was published about the banks because you had some money invested in the First National bank.
A. Oh, yes.
Q. You wasn't then concerned particularly about any other bank.
A. I would take notice of what I thought was a pretty good financial bank.
Q. You didn't have any reason to doubt the First National, nor any disposition to change while they were paying you 6%?
A. That's so.

933 Mr. DEWEESE: That is all.

Witness recalled for further Direct Examination:

By Mr. NORVAL:

Q. You have stated to me since coming into the court room that you desired to make a correction as to the rate of interest that you was receiving from the Capital National Bank.
A. Yes sir.
Q. If you have made any mistake in your stat-ment in that regard you may correct it.
A. I didn't make no mistake in regard to leaving it a year, but

the interest was to be, the certificate reads it was to be three, five or six, if left three, six or twelve months, now if you have got the certificates here you can prove it by that.

Mr. DEWEESE: So that the rate was six per cent. if you left it there twelve months?

A. Yes sir.

Mr. DEWEESE: And it was only five per cent. if you left it in the First National Bank for a year?

A. Yes sir.

934 Mr. FRITZ BECKARD, called as a witness on behalf of the plaintiffs and being duly sworn testified as follows:

Direct examination.

By Mr. R. S. NORVAL:

Q. Where do you reside?

A. Utica, Nebraska.

Q. How long have you resided there?

A. Since 1875.

Q. You may state if you are an officer or interested directly or otherwise in the Utica Bank, of Utica, Nebraska.

A. Yes sir.

Q. How long have you been connected with that bank?

A. Since 1883.

Q. You may state how long you have been an officer of that bank.

A. Since 1883.

935 Q. What official position do you hold in the bank?

A. President.

Q. How long have you been President of that bank?

A. Since 1883.

Q. Who has been the Manager of the Utica Bank since January 1st, 1887?

A. I have.

Q. And who was from 1883?

A. I believe I made a mistake in the dates. I guess it was 1887 since I went in there.

Q. Then you desire to correct your stat-ment that you had been an officer and President since 1883?

A. I have been an officer since 1887,

Q. And you desire to make a correction of that stat-ment?

A. Yes sir.

Q. You may state if you have done any business, your bank, the Utica Bank, with the Capital National Bank of Lincoln, Nebraska, since that time.

A. We have been doing business from the time we organized until she failed, all the time.

Q. What time in 1887?

A. January first, in 1887. It might have been the first and it might have been a couple of days afterwards, whenever we got the papers ready.

Q. Are you acquainted with any of the officers or directors of the Capital National Bank of Lincoln, and were you during the period you done business with them?

A. I know some of them when I see them.

936 Q. Did you know them by reputation?

A. Yes sir.

Q. Name the officers of the Capital National Bank.

Q. Can you state as a matter of recollection?

A. Yes. Mosher was, I couldn't tell his initials. Mosher was President, and Cutcalt was Cashier, and Walsh was Vice President and Thompson was one of the directors and Phillips was one of the directors and Walsh was one of the directors and Hamer was one of the directors and Yates was one of the directors and R. O. Phillips was one of them.

Q. Did you have any knowledge of these men, did you know their business relations?

A. I knew they was connected, from the reports I seen in the papers, they was directors or President of the Capital National Bank.

Q. You say you saw stat-ments in the papers?

A. Yes sir.

Q. What papers?

A. It's the Evening Call and the Daily State Journal.

Q. Published at Lincoln?

A. Published at Lincoln, Nebraska.

Q. How long did you see those notices, or stat-ments?

937 A. I seen them about, sometime they was published once, and would come from the Comptroller of the Currency and sometime they was published twice, they was published about five times a year.

Q. And how many of them would you see during the period you done business with them, each year?

A. I seen them all.

Q. And do you know whose names purported to be signed to those notices?

A. Yes sir.

Q. How were they signed?

A. Well they was signed by three of the directors.

A part of the time was signed by the president and verified by the President and by the Cashier, and sworn to before a Notary Public.

Q. And what did these stat-ments in a general way contain?

A. There was the liabilities. It shows how much their Capital Stock was, how much bonds and real property they had, then the assets, it shows the cash they had, like any other stat-ment, and what notes they had, and all that, like any other of these bank stat-ments.

938 Q. When did you see these stat-ments with reference to the time of your bank's doing business with the Capital National bank?

A. I seen them from 1887 until 1892 the time the bank failed.

Q. What time did the bank fail in 1892 or 1893?

A. '93 I guess, in February, if I would look at the stat-ments I can tell.

Q. Just look at your stat-ments, I want you to be sure.

A. 1893.

Q. What time in 1893, about, not the exact date.

A. The last report I got here is January 19th.

Q. Did you transact business with the Capital National Bank, your bank the Utica Bank transact business with the Capital National Bank when it failed in January 1893?

A. Yes sir.

Q. Now, what knowledge did you have of the standing, financial standing of this bank, the Capital National bank, if any, outside the published stat-ments and reports, which you saw in the pepers, which you would see, say five times a year.

A. All I got from the newspapers, what is published in there. And the stockholders was in there they was good reliable business people.

Q. Did you have any other information except what you saw in the papers?

A. No I haven't.

Q. State to the jury how you come to do business with the Capital National Bank.

A. Well the way they showed up and everything in their stat-ments and everything, it looks to be one of as good banks as was in the state.

939 Q. State whether or not you had any knowledge as to the bank's being in a financially unsound condition at the time you were transacting business with them.

A. No.

Q. Now state the nature of the business you transacted with the Capital National Bank as to whether it was an open account one of your regular correspondents or otherwise.

A. They was our regular correspondent. We kept money there and sent there for collection. We had our money forwarded there from there to our eastern correspondent. And always took bills there and every month we got a stat-ment from them in regard to it and any time they issued a stat-ment to the Comptroller of the Currency they sent us a stat-ment, and that was it in the newspapers.

Q. And did you have any other correspondent in Lincoln, banking correspondent in Lincoln with which you kept an open account?

A. No.

Q. And remitted to?

A. No.

940 Q. And why did you do business with this bank, the Capital National Bank?

A. Well it shows from all reports they make, and stat-ments, that is was as solid a bank as in Lincoln.

Q. How come you to pick this bank in preference to others?

A. Well at the time I went into the bank there I inquired into the affair and looked into the stat-ments, and I considered it about as good a bank, or the best bank they had in Lincoln.

Q. You may state if you know the amount, the balances you kept there from month to month, during the last year, if you have any way of showing that, you may state.

A. Yes sir.

Q. The last year you transacted business in 1892.

A. Yes sir.

Q. Well you may state the amount.

A. Of course I have to refer to these papers here I couldn't tell any other way.

Q. Well refresh your memory from any papers. Take January 1893 and state what you had at the time of the suspension of the bank.

A. $7,497.17.

Q. Does that correspond with your books?

A. That corresponds with our books.

Q. What was the balance you had at the close of business the last of December 1892?

A. Well this balance here, it is January 3, you see they didn't make them all out the first of the month December 3 it is. $3,998.52.

941 Q. What was it at the close of business,—at the commencement of business on December 1st?

A. It was $5270.76.

Q. And what was it at the commencement of business on November 1st, being for the month of October 1892?

A. $165.48.

Q. What was it at the commencement of business on October 1st, 1892 being for the month of September of that year, what was the balance you had?

A. $7563.05.

Q. And what was the balance shown on the first of September 1892 being for the month of August of that year?

A. $7507.63.

Q. And what was your balance on August 1st, the same being the stat-ment for the month of July 1892?

A. $4989.71.

Q. And what was it July 1st, being for the month of June 1892?

A. $8873.55.

Q. And what was it for the month of May being stat-ment rendered June 1st, 1892?

A. $7493.64.

Q. And what was it for the month of April, being the stat-ment rendered May 2nd, 1892?

A. $7429.64.

Q. And what was it for the month of March as shown by the statment made April 1st, 1892?

A. $7416.64.

Q. And what was it for the month of February being the statment made March 1st, 1892?

A. $4403.84.

942 Q. And what was it for the month of January, being the stat-ment made February 1st, 1892?

A. $2605.44.

Q. Now you may state if your balances for the preceding years ran in about the same way.

A. They are pretty near the same.

Q. What amount was the Capital National Bank owing you at the suspension of business on January 23rd, 1893?

A. $7497.17.

Q. Have they paid you any portion of that?

A. Yes sir.

Q. What amount, and when, and by whom?

A. September 1st, 1893 ten per cent.

Q. Give the amount of that?

A. April 26th, five per cent.

Q. On the face amount?

A. On the face amount. And June 10th, 1901 two per cent.

Q. From whom did you receive that?

A. From the Comptroller of the Currency in Washington. No we got an order from the Receiver of the Capital National Bank, we got an order on the Comptroller of the Currency and we had to send it in to Washington to get our money.

Mr. NORVAL: That is all.

Cross-examination.

By Mr. DEWEESE:

Q. How long have you lived in Utica?

A. Since 1875 of 1874, something like that, I couldn't tell exactly.

943 Q. What was your business?

A. Lumber business first.

A. And what business were you in in '83 and '84 and '85?

A. In 1883 I was in the lumber business yet.

Q. When did you first go into the bank?

A. In 1887. I made a mistake at first.

Q. Who had been running the bank before that?

A. A person by the name of Tom Bryant, and two others.

Q. And did you buy them out?

A. I didn't bought them out, they wasn't incorporated. They run a private bank, and so we incorporated, and Higgart stayed in and Tom Bryant stayed in, and we incorporated and a fellow by the name of Jones went in with me, and then we incorporated. And then we started up the Utica Bank.

Q. Was it Jones of the Jones National Bank here at Seward?

A. No sir.

Q. Then what position did you take when it was incorporated?

A. President.

Q. And did you have a board of directors?

A. Yes sir.

Q. Who were they?

A. That was Joe Jones, Ed Hibbard. I couldn't tell without looking at the books, the old books, I haven't them here.

Q. Before this bank was incorporated did it have an account with the Capital National Bank?

A. Yes sir.

Q. How long had they had their account do you know?

A. I couldn't tell without I had the old books here. I could tell if I had them here. I guess they had an account there since they have been doing business.

944 Q. Since the Capital Bank started at Lincoln?

A. Yes.

Q. That was in 1883 or 1884?

A. Somewheres around there.

Q. And when you incorporated you just continued your account right along?

A. Yes we just continued our account right along.

Q. Were you interested in the bank before it was incorporated?

A. No.

Q. That is the time you put your money in, and became an officer?

A. Yes sir.

Q. You said you made some inquiry when you went in about the Capital National Bank, what inquiry did you make?

A. I asked our Cashier, and well he says "here is the stat-ments" he says "of the Capital National Bank in Lincoln" he says "here's their standing and their reports," and he says "well" he says "the reports is good enough and I guess it is al- right," and we got them right along and looked at them and our account was al- right.

Q. Can you tell me why when you were making that stat-ment you kept smiling and looking at Mr. Norval so much?

A. No, I don't know, I can't help laughing, I am good natured, and can't help it.

Q. Its funny that the stat-ments come out just that way, isn't it?

A. What stat-ments?

Q. Those you have just made.

945 A. Well it is so. I had my money in there, I had twelve thousand dollars in there, and I was going to put it somewhere so I thought it was safe, so I wasn't going to lose it.

Q. Well what did you ask,—who was the Cashier?

A. Tom Bryant.

Q. What did you ask him for?

A. I just went in there because I wasn't familiar with the bank business, and I was looking the amounts over, and seeing where they kept their money, of course we couldn't keep it all at home.

Q. Have you got any stat-ments of that kind?

A. What kind?

Q. That you say he talked about.

A. I seen it, it was them stat-ments they published and they was sent to all banks, it is sent to all acorrespondents.

Q. Published in what?

A. Som-times published in the paper, and sometimes they sent them in special correspondence. It is usually in the Lincoln Daily Journal.

Q. Did you take the Journal?
A. Yes sir.
Q. A good republican paper isn't it?
A. Oh yes.
Q. Well the money that you put in when this bank was incorporated went into the bank at Utica?
A. Went in the Utica bank.
Q. Did that bank have any accounts with any other banks in the state?
A. Had some at New York, and Chicago, I guess.
Q. *A*. And in this state?
946 A. No, not at that time.
Q. The account had been there for some years, and it was just continued right along?
A. Just continued on.
Q. And do you know how much money you had on hand in there in 1887 when you started that your bank had?
A. No I couldn't tell without looking at the books, and I haven't got the books here.
Q. You didn't see any reason when you came into the bank for changing what the bank had been doing, in reference to depositing the money?
A. No, I didn't.
Q. Did you examine into the First National Bank of Lincoln, or any other bank in Nebraska?
A. I seen their stat-ments and one of them showed up as good as another, and so it was no use to keep changing.
Q. There was nothing in any of the stat-ments saying anything about solvency or insolvency?
A. No it showed on the face of them they was in fine financial good condition.
Q. Isn't it a fact that the liabilities of the bank were just as big as the resources in the stat-ment?
A. It showed it on the paper that way.
Q. This account that was in the bank there when you went in, that is the account that was in the Capital Bank, when you became President of the Utica Bank, and became interested in the Utica Bank, changing from time to time did it not?
A. Yes sir.
Q. Sometimes you checked it all out didn't you?
A. No I guess I never checked it all out.
947 Q. Are you sure of that?
A. Yes sir.
Q. Do you remember anything about it?
A. Well, I ought to know. If we had any overdrafts there they would soon let us know, they would soon be protested.
Q. Didn't you borrow money of the Capital National Bank at any time?
A. We might borrowed some and might not. I couldn't tell without looking at the books.
Q. Do you know how much of a balance you had there in October 1892?

A. Yes sir.
Q. How much?
A. Well I couldn't tell by memory, you have to give me the paper.
Q. I asked you if you remembered without looking at the books, to know.
A. I couldn't remember without looking at the books.
Q. Don't you remember you had checked it all out then except $165.48?
A. I guess that is right.
Q. What interest were they paying you for your deposits there, on balances?
A. The interest don't tell on that sheet there.
Q. But don't you remember what interest you were receiving?
A. It was either one or two per cent., I couldn't tell without——
Q. One or two per cent. a month?
A. Not a month, no. Yearly. I tell you we don't figure interest by the month, we figure it by the year.
948 Q. What are those you are examining?
A. They are the credits.
Q. Is the interest shown on them, I want to know if it wasn't seven or eight per cent.?
A. No it ain't, I can swear to that.
Q. Did you get any interest?
A. I believe we got some, but all we got is about one or two per cent., I know that.
Q. You remember you did get interest on your balances of some amount?
A. Some amounts yes sir.
Q. But you don't remember exactly how much it was, do you find anything there about it?
A. No, there is just one item of $5.02 here.

Mr. DEWEESE: That is all.

Redirect examination.

By Mr. NORVAL:

Q. If you got any interest, what rate would it be per annum?
A. They make a rule, there is some of them they have to keep two thousand dollars there or they won't get any interest and some of them if they keep one thousand there, then they get one or two per cent.
Q. Per annum or per month?
A. Per annum.
Q. You stated in your cross examination that this bank you bought out there, prior to the time you purchased it, it was run in the name of the State Bank of Utica.
A. No, Utica Bank.
949 Q. It wasn't incorporated before you went in?
A. No I guess it wasn't incorporated,—I don't believe it was.

Witness excused.

Mr. NORVAL: On behalf of the Utica Bank, we offer in evidence Exhibit No. 1053.

Mr. DEWEE: The defendants Thompson, Yates and the estate of Walsh and Hamer each separately object as incompetent, irrelevant and immaterial.

Objection overruled.

The defendants named each separately except.

Mr. WHEDON: The defendants Mosher and Outcalt each separately object as incompetent, irrelevant and immaterial.

Objection overruled.

The defendants Mosher and Outcalt each separately except.

Exhibit No. 1053, received and read in evidence as follows:

950 H. J. WHITMORE, recalled.

Direct examination.

By Mr. THOMAS:

Q. I believe the last time you were on the witness stand you had not examined or compared the account of the Capital National Bank and certain items shown with the Chemical National Bank to see whether they reconcile. I will ask you now if you have examined the books of the Capital National Bank for the month of December 1885. I think that is wherein it shows a charge of $20,300.00 to the Chemical National with Exhibit "D" attached to the deposition of Ayres and Bigelow of New York city, to ascertain whether the books of the Chemical National contain a credit of that amount $20,300.00 that is I mean a credit to the Capital National Bank.

A. I have examined the books of the Capital National Bank and also the exhibits attached to the deposition.

Q. That exhibit D contains the items which purport to be for December 1885 and January 1886?

A. Yes sir.

Q. What is the result of that comparison and attempt at reconciliation?

951–959 Q. With what account of the books of the Capital National Bank did you compare these exhibit- or this exhibit D?

A. The account for December 1885 and January 1886 on the books of the Capital National Bank with the Chemical National Bank.

Q. Now you may state the result of that comparison.

A. I am unable to find that the Chemical National Bank, during December and January credited the Capital National Bank with the item of $20,300.00 charged on the books of the Capital National Bank, December 28th, 1885.

* * * * * * *

960 Q. Have you examined the books of the Receiver to ascertain what notes are shown by the Receiver that are not indicated in the schedule, which you have prepared, and which has just been introduced in evidence?

A. Yes sir.

Q. Now you may state what notes they are.

961 Q. That is I mean by that to explain the discrepancy between the amounts as shown on this schedule, and the amount in the hands of the Receiver.

Mr. DEWEESE: Not shown by the books of the bank?

A. Yes sir.

Q. I do not refer exclusively to notes not shown on the books of the bank, but to notes in general, which has not been paid, or at least were still outstanding as an obligation of the bank.

A. There were $17,500.00 of the paper of the Western Manufacturing Company, that appears on the books of the Receiver, which on the books of the bank is shown to have been paid, that is it is marked as paid. Then there are $42,500.00 of the same paper shown on the Receiver's books which do not appear on the books of the bank at all. I have not been able to find the numbers, some of the numbers impossible numbers, and some of the notes are not listed at all, so they do not enter into the bank's account of the notes listed in the discount register, nor entered in the journal

962 Q. Is this item of $235,000.00 Western Manufacturing Company notes included in the total amount of Bills Receivable which the Receiver shows by his books, and came into his hands as a part of the assets of the Capital Bank?

A. Yes sir.

Q. You may state what further discrepancies you find if any, between the Bills Receivable which were shown on the bank's books, and those which came into the hands of the Receiver, as shown by the Receiver's books.

963-967 A. The Receiver's books shows a list of notes amounting to $9,780.65 which upon the bank's books have been marked paid. The Receiver's books also show $75,900.00 of other rediscounts that is re-discounts other than those of the Western Manufacturing Company, which do not appear upon the books of the bank, so far as I am able to discover, some of them without numbers. All together the Receiver has listed a total of $145,680.65 in Bills Receivable which have either been marked paid, on the books of the bank or do not appear upon the books of the bank at all.

* * * * * * *

968 Q. I will ask you if on the 15th of June 1892, the books indicate or show that any certificates were charged off, or marked paid on that day?

A. The books show the payment of certain certificates.

Q. You may state what certificates are shown paid that day, and what charges if any appear with reference to any Bills Receivable of the bank as disclosed by the books, on that same day.

A. C/D #26167——

Q. What does C/D mean?

A. Certificate of deposit. For $10,000.00, No. 26168 for $5,000.00,—No. 26187 for $12,136.65,—No. 26198 for $13,-

969 886.83. No. 26206 for $16,929.70,—No. 26273 for $15,-000.00, total $72,953.18 are marked paid.

COURT: Are entered as paid?

A. Yes sir, and are marked paid on the register, entered on the ledger account as paid. On the same day Bills Receivable are credited with a lump sum marked C/D the abbrevation for Certificate of Deposit of $57,953.18 and re-discounts are credited with $15,000.00 making a total of $72,953.18. The credit to Bills Receivable does not specify any bills that were paid, and there is nothing to indicate that any bills were included in this amount, simply a reduction of that amount from the amount of Bills carried on the books of the bank.

Mr. THOMAS: That is all.

Cross-examination.

By Mr. DEWEESE:

Q. That is the entry purports to be payment of so much Bills Receivable and then the payment of so much certificates of deposit that the bank has issued.

A. Yes sir.

Q. There is nothing wrong with that, is there, if it had been done?

A. Why if the bank had received payment for fifty seven thousand dollars of Bills Receivable, why of course there would be nothing wrong.

Q. You are not able to state that it did not are you?

A. I think I am prepared to say that they did not receive that payment.

Q. How do you know?

A. From the entry on the books.

Q. What does the entry say?

A. C/D $57,953.18.

970–973 Q. And that is all it says.

A. Yes sir.

Q. You think by that there was no Bills Receivable collected or paid that day?

A. Yes sir.

Q. And just on that basis alone is all that you have to hand your stat-ment on is it?

A. Well the books show that on that day there were two or three notes paid, they are listed on the Journal the number and amount.

A. And because these were not listed you think they were not paid?

A. Yes, I am satisfied that there were no notes paid.

* * * * * * *

974 Mr. H. T. JONES, being called as a witness on behalf of the plaintiffs, and being first duly sworn testified as follows:—

Direct examination.

By Mr. THOMAS:

Q. You may state your name?

A. H. T. Jones.

Q. How long have you lived in Seward County?
A. Since July 1873.
Q. What has been your business or occupation during that time.
A. For the last seventeen years, or thereabouts, the banking business principally.
Q. With what bank have you been connected if any?
A. The Jones National Bank, of Seward Nebraska.
Q. In what capactiy?
A. Cashier and President.
Q. During what period were you Cashier?
A. From the organization of the bank in November 1883, I was Cashier up to, I think January 1890. Since that time I have been president.
Q. Prior to the time you were president, and while you were Cashier, who had active charge and control of the bank and conducted its business?
A. I have principally, always.
Q. Did the Jones National Bank do business, or keep any moneys on deposit in the Capital National Bank, or Lincoln, Nebraska?
A. It did.
975 Q. When did it commence doing business with that bank?
A. Somewhere in 1885, I believe.
Q. And how long did the Jones National Bank continue to do business with the Capital National Bank?
A. Up until the time it suspended, January 21st 1893.
Q. What was the nature of the business transactions between the two banks?
A. Why we kept what you would term an account with them, deposited with them.
Q. Was the Capital National Bank your Lincoln correspondent as it is termed in banking.
A. Yes sir.
Q. Do you know the amount of money the Jones National Bank had on deposit with the Capital National Bank and which the Capital National Bank was owing the Jones National Bank on the 21st day of January 1893?
A. Our books showed $12,529.23 but the facts were that they were owing us $17,529.23 on account of a $5,000.00 remittance I had ordered them to make, and sent them the money, and they reported to me that they had, but they never did.
Q. What was that remittance you ordered them to make?
A. $5,000 to the Chemical National Bank of New York city.
Q. And did the Capital National Bank report to you that that amount had been remitted to the Chemical National Bank, for the Jones National Bank?
A. It did on the 16th day of January 1893.
Q. I hand you exhibit No. 1054 and will ask you from whom that was received and where you received it?
A. It was received in the regular course of business, by mail,

from the Capital National Bank, a postal card in the hand
976 writing of Col. Hale.

Q. What does the writing on that postal card indicate, what does it mean?

A. That they have remitted for our account, New York, $5,000.

Q. Is that the item to which you referred in your previous answers, the one which you had ordered transferred to the Chemical National and which the Capital National had not remitted?

A. It is.

Q. And does that item account for the difference between the amount as shown by your books, which they owed you, and the amount which they actually owed you?

A. It does.

A. At the time you ordered this money forwarded or transferred by the Capital National Bank to the Chemical National bank, did you give the Capital National Bank of Lincoln credit on your books for the $5,000?

A. Yes sir.

Mr. THOMAS: We offer in evidence Exhibit No. 1054.

No objections.

Exhibit No. 1054 received and read in evidence as follows:—

Addressed:—Jones National Bank, Seward Nebraska.

[Lincoln, Nebr., Jan. 17, 1.30 a. m., '93.]

C. W. Mosher, President. H. J. Walsh, Vice Pres. R. C. Outcalt, Cashier.

Capital National Bank.

LINCOLN, *Nebraska,* 1/16, 1893.

Yours of — Received with enclosures as stated.

Credited	Entered for collection	We remit
1009		New York.... $5000
		Chicago
		Omaha
	Ex. 1054. OPH	Currency
		Silver

This bank in receiving collections, elsewhere than in Lincoln, acts only as your agent and assumes no responsibility beyond that of due diligence on its part.

Yours respectfully, R. C. OUTCALT, *Cashier.*

977 Q. I believe you stated you had been doing business with the Capital National Bank since 1885. Now I will ask you if during the time the Jones National Bank was doing business with the Capital National Bank, you saw any of the published stat-ments of the financial condition of the Capital National Bank?

A. I did.

Q. You may state in a general way when you saw these published

reports referred to with reference to the time of your doing business with the Capital National Bank.

A. As soon as published and the mails would arrive here from Lincoln.

Q. How frequently were these reports published, referring to the notices of the financial condition of the Capital National Bank?

A. Five times each and every year.

Q. And these notices that you saw where were they published?

A. They were published, printed in the Lincoln State Journal and a number of them in the Call.

978 Q. What Call do you mean, The Lincoln Evening Call, was it?

A. It was a paper generally known as the Call. I don't know whether you call it the Lincoln Call.

Q. Where was it published?

A. At Lincoln, Nebraska, Daily Call, I guess.

Q. Do you know whether or not all the notices that were published by the Capital National Bank showing its financial condition from the time that the Jones National Bank did business with the Capital National Bank, were seen by you?

A. Yes I think I saw every one of them. It was the custom of the bank then as it is of banks today to have stat-ments printed on either a card or a slip of paper and then mail them to all customers or people who they desired to do business with.

Q. Did you see the stat-ments of their financial condition that were published in the Lincoln State Journal, and the Call?

A. Yes sir.

Q. Did you read them over or examine them?

979 A. Yes sir.

Q. Referring to the issues of the Lincoln Journal and the Daily Call, which have been introduced in evidence, and which contained published stat-ments of the condition of the Capital National Bank, at different times, I will ask you if you saw the notices that were published in these papers to which I have just referred?

A. I think I answered that question, that I did before.

Q. (Last question repeated.)

A. I did.

980 Q. Now I will ask you if you were acquainted, or know who were the Directors of the Capital National Bank during the time your bank did business with it, and deposited money with it?

A. I do.

Q. Were you acquainted with their reputation and standing in the business and financial world.

A. Yes sir.

Q. You may state what that was.

A. The majority of them was good.

Q. What was the reputation, state more fully, with reference to whether they were men of ability or otherwise or men of means or otherwise.

A. They were men of means, and they were business men. Men

connected with large business institutions in Lincoln and in handling and loaning money.

Q. Had you any other information concerning the condition of the Capital National Bank, during the time the Jones National Bank did business with it other than what you have testified to?

A. Their stat-ments were the principal thing that all business men rely upon. That is what they are made for.

Q. Had you any other means of information than the stat-ments?

A. No other means as to the standing of the bank whatever, any more than the names signed to the stat-ments lend to a stat-ment.

Q. Did they lend to the stat-ments in your mind?

A. They certainly did.

Q. In what way?

A. Because I knew they were business men, and when you receive a stat-ment from a business man, you have got a right to rely upon it, you think it is a fact. A business man isn't supposed to put his name to anything that is not true.

981 Q. Did you rely upon those stat-ments?

A. I certainly did.

Q. Do you remember now who some of the directors of the Capital National Bank were?

A. Yes sir.

Q. You may state some of them.

A. C. W. Mosher, President, R. C. Outcalt, Cashier, and Homen J. Walsh, Vice President. And D. E Thompson, R. O. Phillips, A. P. S. Stuart, W. W. Holmes, during his lifetime. Yates, Dr. Hamer,—that is all I remember now.

Q. Did you state that Mr. Walsh was a director?

A. I did, he was director and Vice President.

Q. You may state if you had any knowledge in regard to any of the discrepancies between the books of the National Capital Bank and its actual condition during the time the Jones National Bank did business with it.

A. I did not.

Q. Did you know that it had certificates of deposit outstanding which were not shown, or were under stated on its books?

A. No sir, I did not. I was not aware of any irregularities, or any crooked work until after the failure of the bank.

Q. If you had known of these matters would it have effected the business of the Jones National Bank with the Capital National Bank?

A. I would have withdrawn every dollar out of there, if I had known there had been any crooked work.

Q. I hand you Exhibit No. 1055 and will ask you to state when and from whom you received that postal card.

982 A. I received that postal card in the regular course of business by mail from the Capital National Bank.

Q. About what time?

A. About the 19th day of January 1893.

Q. You may state if you know what the writing on the back of that indicates.

A. That is $5,000 in gold that I sent them by express.
Q. On the 19th day of January 1893?
A. Yes sir.
Q. Do you remember what that was sent for, how it come to be sent?
A. Because they had remitted according to my order five thousand dollars to New York City.
Q. That is they reported they had remitted?
A. Yes sir.
Q. And was this gold sent to them in response to the notice exhibit No. 1054 notifying you that they had forwarded to the Chemical National Bank of New York for the credit of your bank five thousand dollars?
A. Yes sir.
Q. And did they ever forward or transfer any money this five thousand dollars referred to in this postal card, to the Chemical National Bank of New York for the credit of your bank?
A. No sir, they never sent a cent to them.

Mr. THOMAS: We offer in evidence Exhibit No. 1055.
No objection. Ex. No. 1055 received and read, as follows:

983 Address, Jones National Bank, Seward, Nebraska.

[Lincoln, Nebraska. Jan. 19, 5.30 p. m., '93.]

C. W. Mosher, Pres. H. J. Walsh, Vice-Pres. R. C. Outcalt, Cashier.

Capital National Bank.

LINCOLN, NEBR., 1/19, 1893.

Yours of 1/19 received, with enclosures as stated.

Credited	Entered for Collection	We Remit.	
5000	Gold	New York	$—
		Chicago	$—
		Omaha	$—
	Ex. 1055 OPH.	Currency	$—
		Silver	$—

This bank, in receiving collections elsewhere than in Lincoln, acts only as your agent and assumes no responsibility beyond that of due diligence on its part.

Yours respectfully, R. C. OUTCALT, *Cashier.*

Q. Now has the Jones National Bank, or you for it, received any part of the $17,529.23 which the Jones National Bank had on deposit in the Capital National Bank at the time of its suspension and if so state the facts, state the amounts and the dates paid, and from whom received.
A. There has been three dividends. The first dividend was ten per cent., that was in August 1893. The second dividend was five per cent. Now then the third dividend was two per cent. The dates of the payments of those last two I am not certain of. This

receiver's certificate is not the last one I had. There is another one, that has got them both on. The original was lost for a while and they issued a duplicate and the duplicate has the dates of the last two stamped on.

Q. Well about when was it, the second one about May 2nd, 1894?

A. Yes sir.

Q. And the third one about July 15th, 1901?

984 A. Yes sir.

Q. And is that all the bank has received on that account?

A. Yes sir.

Q. Are you acquainted with the methods of keeping books in banks?

A. Somewhat yes sir.

Q. What experience have you had in that line?

A. I have been in the banking business since 1883.

Q. I will ask you if you have made any examination of the books documents and papers of the Capital National Bank, since its failure?

A. I have at various times.

Q. Now state when you first made such an examination?

A. The first time I examined the books after the failure was on the 23rd day of January 1893.

985 Q. Where were the books at that time?

A. They were in the Capital National Bank.

Q. Where did you examine them the next time after that?

A. I was down the following Wednesday?

Q. I asked you where the next time?

A. In the Capital National bank building.

Q. That is in the building in which the bank had been doing business prior to its suspension.

A. Yes sir.

Q. Who was in charge of the books at that time?

A. Mr. Griffith, National Bank examiner.

Q. When did you next examine them?

A. Why I examined the books several times, while they were in his custody and the next time when they were in the possession of Kent K. Hayden.

Q. The Receiver of the bank?

A. Yes sir.

Q. Did you make an extended examination of them while they were in the possession of Mr. Hayden?

A. Yes sir. I went over about everything they had.

Q. Did you have access to and examine the books after the death of Mr. Hayden, and while they were in the possession of Mr. McDonald the receiver who succeeded Mr. Hayden?

A. I did.

Q. When did you first have access to and examine them after Mr. Hayden's death?

A. Why a few months after McDonald was appointed Receiver.

Q. And did you spend very much time on them at that time?

A. Why a number of days.

986 Q. Did you have an expert or an accountant of any kind to assist you in the examination at that time?

A. I did to a certain extent.

Q. Who was that?

A. W. A. Bartley of Lincoln, and J. J. Thomas of Seward.

Q. How long did you have access to the books at that time, and examine them?

A. About three weeks.

Q. And have you examined the books since that time?

A. I have.

Q. When?

A. Within the past few months.

Q. How much time about have you devoted to the books during the past year?

A. Why about three weeks, but it has all been within the past, why since the last term of court, when was that,—in March?

Q. You may state how much time you think you have devoted to examining the books, documents and papers of the Capital National Bank since its failure?

A. Oh, in the neighborhood of six months all together.

Q. I will ask you if in your examination you examined certificates of deposit which had been issued by the bank during its existence and which were in the custody of the Receiver?

A. Yes sir.

Q. I hand you Exhibit No. 1056 and will ask you if you know what that is?

A. I do.

Q. You may state what it is.

A. That is a photograph of a certificate of deposit No. 17969 issued by the Capital National Bank.

987 Q. Did you ever see the original?

A. Yes sir, several times.

Q. You may state whether you know whether or not that is a correct and exact photographic reproduction of the original which you say you have seen several times.

A. It is.

Q. Where was the original when you first saw it?

A. In the hands of Receiver Hayden.

Q. And when you last saw it, where was it, in whose possession?

A. In receiver McDonald's.

Q. When was that as near as you can remember?

A. It was about two years ago or such a matter.

Q. Do you know where the original is?

A. I do not.

Q. You were in the city of Lincoln at the time the deposition of Mr. McDonald was first taken, in which he was asked to produce certain certificates of deposit?

A. I was.

Q. You may state if you remember whether he was asked to pro-

duce the certificate of which Exhibit No. 1056 is a photographic copy?

A. Yes sir he was.

Q. Do you remember if he produced it?

A. No sir, he said he didn't have any such a certificate.

Q. And did he, or did you make search for the certificate?

A. At the time?

Q. Yes at that time or since.

A. Why he went and made a search and came back and reported he couldn't find it. And I searched for it afterwards, I didn't find it but I found other certificates that were called for that day, and he couldn't find.

988 Q. Where have the books, documents and papers of the Capital National Bank been kept, since Mr. McDonald has been receiver up to the time of this trial.

A. After he took charge of them, they h-ve been kept in what is known as his vault and the old Savings Bank vault,—which is in the same building but not in the same room.

Q. Are these vaults the ones in which search was made?

A. Yes sir.

Q. Did you notice the signature to the original certificate, of which this is a copy, and the handwriting in the body of it?

A. Yes sir, it is all written by one fellow.

Q. Do you know in whose handwriting it is?

A. Yes, in C. W. Mosher's president.

Q. Are you acquainted with the handwriting of Mr. Mosher?

A. Yes sir.

Q. Did the original certificate of deposit bear an endorsement on the back of it?

A. None whatever.

Mr. THOMAS: Now we offer in evidence Exhibit No. 1056.

989 Exhibit No. 1056 is received and exhibited in evidence, being to this page attached.

$40,000.00.

Capital National Bank.

LINCOLN, NEBR., *April* 28, 1888.

Paid Jan. 1, 1889, Capital National Bank, Lincoln, Neb.

C. H. Willard Treas. has deposited in this bank Forty Thousand Dollars payable to the order of self on return of this certificate properly endorsed.

Paid Dec. 31, 1888, Capital National Bank Lincoln Neb.

C. W. MOSHER, *Pt.*

No. 17969—Not subject to check.
Interest at —— if left — months.

990 Q. Now I will ask you if you have examined the books of the Capital National Bank with reference to this certificate,

to ascertain what entries were made on the books of the bank with reference to this certificate at the time of its issuance or payment?

A. Yes sir.

Q. Are you able to state what entry if any was made on the books of the bank at the date of the issuance of this certificate?

991 A. Yes sir.

Q. Are the books of the bank with reference to the transaction just referred to now in court?

A. Yes sir.

Q. And open to inspection of anyone desiring to see them?

A. Yes sir, for anything I know.

Q. They are in the possession of Mr. Whitmore on behalf of the Receiver?

A. Yes sir.

Q. To be used in these cases.

A. That is my understanding.

Q. Now you may state what the books of the Capital National Bank show with reference to the issuance of this certificate of deposit Exhibit No. 1056.

992 A. The name and amount on the stub is blank or in other words $40,000 is written down and then crossed out with a pen. The certificate is issued for $40,000. No amount whatever was paid or entered as received on the books of the bank on this certificate. And this certificate was paid as $40,000 on January 7th, 1889 and the amount thereof credited to Outcalt and Mosher.

Q. Now I will ask you to state if you examined any other certificates of deposit issued by the bank, and compared them with the corresponding stub from which they were taken, also with the certificate register, and the general books of the bank, so that you are able to testify the amount for which it was issued as shown by the stub, and certificate register, and other books of the bank, and also the amounts for which it was paid as shown by the books?

A. Yes sir.

Q. Now you may state what you found with reference to such certificates giving the numbers of the certificates, the amounts, etc.

993 A. Certificate No. 19272 was issued on the stub book to G. M. Bartlett for $5.00. The certificate was issued in the same name for $100,000.00 and it was carried to the books of the bank, that is to the certificate of deposit account as $5.00. The certificate was paid as $100,000.

Certificate of deposit No. 21386 was issued to J. E. Hill, $5.00 that is the amount on the stub on December 24th, 1889. The certificate itself is in the name of G. M. Bartlett Treasurer, $50,000 and carried onto the certificate register as G. M. Bartlett, Jr. as $5.00. It is paid as $50,000.

Certificate of Deposit No. 24572 was issued to Mrs. J. M. Merril according to the stub on May 15th 1891 for $641.60. The certificate was issued in the same name but is $1641.60. And it was carried onto the books as $641.60, it was paid as $1641.60.

Certificate No. 24574 the stub shows issued to P. F. L. Ashton May

15th 1891. $1500. The amount on the register $500 and it was paid as $1500.00.

Q. Have you examined the books of the bank with reference particularly to the Certificate of Deposit account, in the individual deposit ledger, under date of April 25th, 1891?

A. Yes sir.

Q. Referring now to a debit charge of $100,000 under that date indicating a payment of a certificate of $100,000 I will ask you if you examined that item of charge and also the certificate of deposit register, certificates of deposit and the books of the bank with reference to that entry?

A. Yes sir, I have.

994 Q. What have you to say with reference to that entry?

A. That was simply a charge of One Hundred Thousand dollars on April 25th, 1891 to Certificate of Deposit account, because there was no such certificate outstanding at that date.

Q. Have you examined the books and documents of the bank, to ascertain whether such a certificate of deposit was outstanding at that date?

995 A. I have.

Q. You may state what investigation you have made, and if you know whether or not such a certificate of deposit was outstanding and unpaid at that date.

A. I examined all the books regarding this certificate kept by the bank and they show no such certificate of deposit outstanding at that date.

Q. On that day you may state if the books indicate the issuance of a certificate of deposit?

996 Q. What did they show?

A. They showed the issuance of a certificate of deposit for $100,250.

Q. Now you may state if you can explain, from your examination of the books and your knowledge as an expert what those transactions indicate and what actually transpired.

A. Yes sir.

Q. You may explain fully.

997 A. There was a duplicate of the credit to the amount of $100,250 fraudulently made on that day.

Q. You may explain fully what you mean by that.

998 A. On that day the Chemical National Bank is charged with $101,516.70. The Nebraska Relief fund is credited $100,250. Certificate of Deposit No. 24,454 was issued to Ihmhoff for $1,166.70 and certificate of deposit No. 24453 was issued to C. W. Mosher for $100 thus balancing the charge of $101,516.70 to the Chemical National Bank. Then they issued a certificate of deposit in the name of J. E. Hill for $100,250 and falsely charged up against the certificate account $100,000 to offset this steal.

Q. What was the number of that certificate of deposit of $100,250 to which you refer?

A. 24452.

Q. I will hand you that original certificate, which is exhibit No.

140 and ask you to examine the handwriting or endorsement on the back of it, and also the writing on the face of the certificate including the signature, and ask you if you are acquainted with that handwriting on that certificate.

A. Yes sir I am.

Q. Who wrote the certificate itself, that is the body of it, and signed it?

A. C. W. Mosher wrote it all.

Q. And now examine the back of it, and state if you know the handwriting of the endorsement on the back.

A. I do.

Q. Whose handwriting is that?

A. C. W. Mosher's.

999 Q. Do you know the handwriting of J. E. Hill, formerly state treasurer?

A. Yes sir, J. E. Hill, never signed that.

Q. Is that J. E. Hill's handwriting on the back of it?

A. No sir, it is Mosher's hand writing.

Q. I will ask you to state Mr. Jones, if during the various and numerous times you have examined the books of the Capital National Bank you made any special inquiry to ascertain its financial condition as to its solvency.

A. I have.

Q. Did you examine the books of the Marsh National Bank with the same purpose in view?

A. Yes sir.

Q. From your examination of these books, and your knowledge as an expert accountant, are you able to state what the condition of the bank was at the various times as to its solvency or otherwise and to the general condition of its assets?

1000 A. I think I am.

Q. Are you acquainted with the various makers of the notes which the bank held as shown by the banks own books, and some of the original paper, if you have seen any?

A. Yes sir.

Q. Are you acquainted with the financial responsibility of Charles W. Mosher?

A. I am.

Q. And of Edwin W. Mosher?

A. I am.

Q. Stark and Mosher?

A. I am.

Q. And W. A. Sharrer?

A. Yes sir.

Q. The Western Manufacturing Company of which E. Hurlbert Jr. was manager?

A. Yes sir.

Q. The Southern Stave & Lumber Company, R. C. Outcalt, W. T. Scott, C. W. & W. W. Marsh, Sycamore Marsh Harvester Manufacturing Company The Marsh Binder Company?

A. Yes sir.

Q. I will ask you if you have made an examination of the books of the Capital National Bank, to ascertain what losses had been sustained by it, and the books of the Marsh National Bank for the same purpose, on or prior to April and July 1st 1890?

A. Yes sir.

1001 Q. You may state what losses, if any the bank had sustained up to that time.

Q. Before answering that question, I will ask you to state if the books from which you obtained that information and knowledge are in court and open to the inspection of counsel for defendants?

A. They are here in court.

Q. Now you may answer the above question.

A. A total loss of $877,000 up to July 1st, 1890.

1002 Q. Now you may state what items comprise the total to which you have just testified.

A. They had a loss of $28,174.70 Donnel-, Lawson & Simpson, a failed bank in New York city. Then afterwards the books show that they took notes of these parties amounting to $58,863.00. Collection account, Marsh Bros., Mosher & Co., was a loss of $100,000.00. Stock & Bond account was a loss of $30,000.00. False credits to Interest paid account $46,813.00. Manipulated Certificates of Deposit $139,995.00. Paid out in dividends and credited to Surplus Account, when there were none $186,000.00. Falso Certificates of Deposit No. 24452, $100,250.00. Bills of Exchange $29,968.00. Worthless Bills Receivable on hand $146,679.70. Falso credits to State Treasurer Hill's open account of $100,000 is what I consider losses that the bank had sustained up to July 1st, 1890.

1003 Q. What paper or notes were included in what you have called worthless Bills Receivable, give it in a general way.

A. Notes given by R. C. Outcalt, C. W. Mosher Mosher & Outcalt, Scott, Tuerk, Sycamore Marsh Harvester Company, Western Manufacturing Company, Stark & Mosher. I have got the number of every note if you want it.

Q. Have you prepared a schedule showing the notes to which you have just referred, which were in the bank and a part of its Bills Receivable on July 1st, 1890?

A. Yes sir.

Q. Is Exhibit No. 1057 the stat-ment to which you refer?

A. Yes sir.

Q. Does that schedule contain the total amount of notes to which you have testified as being in the bank on that day, which

1004 you consider worthless?

A. Yes sir.

Q. Did you compile that from the books of the bank themselves, yourself?

A. Yes sir.

Q. Do you know whether or not that is correct?

A. In my opinion they were perfectly worthless.

Q. I mean is that stat-ment correctly taken from the books.

A. Yes sir.

Mr. THOMAS: We offer in evidence Exhibit No. 1057.

Exhibit No. 1057 received and exhibited in evidence as follows:

1005 *Worthless Paper Held by the Capital National Bank, July 1, 1890.*

49499	Stark & Mosher	$5000	
50003	Stark & Mosher	7242.94	
50004	" "	5926.02	
50006	" "	5505.68	
50007	" "	5623.70	
50008	" "	4307.28	
50009	" "	3968.25	
50022	" "	6000.00	
50048	" "	1438.82	
75021	" "	8631.20	
79082	" "	5000.00	
			$58643.89
80065	Western Manufacturing Co.		5000.00
49342	W. A. Sharrar		4810.30
76015	Marsh Binder Co.		9000.00
80069	C. W. & W. W. Marsh		3600
80070	Sycamore Marsh H. Co		4500.00
49174	Marsh & Hinds		1000
76017	C. E. Tuerk		5693.39
77016	W. T. Scott.	2409.11	
79039	W. T. Scott	4798.85	
50000	W. T. Scott	7644.16	
			14852.12
76030	Mosher & Outcalt.		1250
50526	C. W. Mosher	10000.00	
50527	C. W. Mosher	5200.00	
50531	C. W. Mosher	10500.00	
50536	C. W. Mosher	5000.00	
			30700
50530	R. C. Outcalt.	5200	
50537	R. C. Outcalt.	3430	
			8630

1006 Q. And have you made a similar examination of the books with reference to its condition on July 1st, 1891?

A. I have.

Q. You may state as you have in your previous examination the result of that investigation, as shown by the books of the bank.

Q. Before answering that question, I will ask you to state Mr. Jones if the books, which you examined and from which you are testifying and made the stat-ments or compilation of stat-ments which you refer to in your previous answer, and which you may hereafter refer to are in court now and subject to an examination by the defendants?

A. Yes sir.

Q. Now you may answer the question. You may state as you have in your previous examination the result of that investigation as shown by the books of the bank.

1007 A. Up to and prior to July 1st, 1891 the bank had sustained the following losses,—Donnell, Lawson & Simpson bank account $28,174.70. Notes of Donnel, Lawson & Simpson $58,863.68.

Collection account Marsh Bros. Mosher & Co. $10,000.00. Stock & Bond account $30,000.00.

Also credits to Interest Paid account $70,813.00.

Manipulated Certificates of Deposit, $190,990.00.

Paid in dividends and credited to surplus account, when there was none $220,000.00. Fraudulent certificates of Deposit No. 24452, $100,250.00. Bills of Exchange account $29,968.00.

Steal in State Treasurer Hill's open account $100,000.00.

Worthless Bills Receivable in the bank, $186,137.56.

Making a total of $1,025,196.94.

Q. I will ask you to state what notes are included in the item of $186,137.56 which you have classed as worthless and before you answer I will ask you if you have prepared a stat-ment or schedule in which you have listed the notes which were included in that sum concerning which you have just been asked.

1008 A. I have.

Q. Is Exhibit No. 1058 which I hand you such a statement?

A. Yes sir.

Q. Who compiled that stat-ment, and from where was it taken?

A. I took that from the books of the Capital National bank.

Q. Do the books of the Capital National Bank show that the notes listed there were in the bank at that time?

A. Yes sir.

Q. Did you compile that list yourself?

A. I compiled that list, of course it is a typewritten list supposed to be a copy of what I took from the records?

Q. Well is it a copy of what you took from the records?

A. I think it is.

Q. And are the books from which you compiled that in court?

A. Yes sir.

1009 *Worthless Paper Held by the Capital National Bank, July* 1, 1891.

Taken by bank.	No.	Maker.	Date.	Due.	
8/20-90	49358	Stark & Mosher.....	9/28-89	12/30-89	$12472.25
3/10-91	49499	" "	9/ 3-90	12/ 5-90	5000.00
8/31-89	50003	" "	10/ 1-88	Demand.	7242.94
8/31-89	50004	" "	10/ 1-88	"	5926.02
8/31-89	50006	" "	10/ 1-88	"	5505.68
8/31-89	50007	" "	10/ 1-88	"	5623.70
8/31-89	50008	" "	10/ 1-88	"	4307.38
8/31-89	50009	" "	10/ 1-86	"	3968.25
2/ 1-90	50048	" "	-89	"	1438.82
2/31-89	50022	" "	2/19-89	"	6000.00
8/28-89	50056	" "	12/ 2-89	"	6881.18
8/28-89	50057	" "	12/ 2-89	"	5963.86
11/25-89	75021	" "	11/25-89	5/21-90	8631.20
10/24-90	94019	" "	10/17	11/20-91	10600.00
4/13-91	98030	Western Mfg. Co	4/11-91	8/14-91	5000.00
6/ 2-91	98161	" " "	5/15-91	5/15-91	5000.00
6/ 3-91	99022	" " "	6/ 2-91	9/ 3-91	5000.00
6/ 5-91	99068	" " "	6/ 5-91	9/ 6-91	5000.00
1/13-90	49174	Marsh & Hinds	11/12-88	5/15-89	1000.00
1/ 7-91	96020	" Binder Co	12/12-90	6/16-91	9000.00
6/25-91	102040	C. W. & W. W. Marsh.....	6/23-91	12/26-91	3600.00
6/25-91	102041	Sycamore Marsh H. Co.....	6/20-90	12/23-91	4500.00

Taken by bank.	No.	Maker.	Date.	Due.	
1/ 7-91	96030	C. T. Tuerk	12/17-90	6/20-91	6286.92
			C. W. & W. W. Marsh.		
1/27-91	96039	W. A. Sharrar	12/12-90	6/20-91	1166.62
1/28-91	96040	W. A. Sharrar	6/20-90	6/20-91	5291.30
12/ 1-90	96016	Mosher & Outcalt	12/ 1-90	6/ 4-91	3138.72
12/31-90	97000	" "	12/31-90	1/ 3-91	1040.00
1/15-91	97010	W. T. Scott	1/12-91	7/15-91	2656.00
3/30-91	99027	W. T. Scott	3/23-91	9/26-91	5294.90
8/31-89	50000	W. T. Scott	5/23-87	Demand.	7644.16
10/22-90	50544	C. W. Mosher	10/29-90	5/ 2-91	5000
12/23-90	96025	R. C. Outcalt	12/22-90	6/25-91	4160
5/ 7-91	98065	R. C. Outcalt	5/ 7-91	8/ 8-91	5100.00
5/ 7-91	101011	R. C. Outcalt	5/ 7-91	11/10-91	6240.00
1/ 5-90	95025	R. C. Outcalt	11/ 5-90	5/ 8-91	5200.00
Total					

Ex. 1058.

1010 Q. I will ask you to state if you haxe examined the books of the Marsh National Bank to ascertain if any losses had been sustained at the time it was organized or at the time it became the Capital National Bank?

A. Yes sir, I examined the books.

Q. With reference to what date?

A. I examined the books at the time the transfer was made from the Marsh Bros. Mosher & Co., to the Marsh National Bank, and I examined the books at the time the shift was made from the Marsh National Bank to the Capital National Bank.

Q. You may state if the bank had sustained any losses at the time is was incorporated as the Marsh National Bank?

A. Yes sir.

1011 Q. You may state if you can what losses, if any it had sustained at the time it was incorporated, and became known as the Marsh National Bank?

A. There was a $10,000.00 loss of Marsh Bros, Mosher & Co. collection account. $30,000 loss in Stock & Bond account, those were the principal losses I remember now.

Q. Now I will ask you to state from your examination of the books if you can, what losses if any, it had sustained up to the time the name of the bank was changed to the Capital National Bank.

1012 A. $10,000 loss in Marsh Bros. Mosher & Co., collection account. $30,000 Stock & Bond account, and $28,174.70 of Donnell, Lawson & Simpson, a failed New York bank. Those were the principal losses.

Q. In your examination of the books which are in the hands of the Receiver, did you find any books in which were contained a list of any of the Bills Receivable which was carried on the books of Marsh Bros. Mosher & Co., or the Marsh National Bank?

A. No sir, the book was swiped.

Q. In testifying to losses which had occurred at the time it became the Marsh National Bank, and when the name was changed to the

Capital National Bank, you have included nothing with reference to Bills Receivable that may have been bad?

A. No, I named what the losses were. No Bills Receivable in them.

1013 Q. Do you know anything about the value of the Bills Receivable which was on hand when the Marsh Bros. Mosher & Co., account was transferred to the ledger of the Marsh National Bank?

A. No in fact, No.

Q. I will ask you this question, from your knowledge as an expert and an accountant, and your acquaintance with the books of the National Banks generally, and from your knowledge of the makers of some of the paper, which the Capital National Bank held at various times, during its existence, are you able to state whether or not that bank was solvent or insolvent at various times when these reports which have been introduced in evidence were published?

A. Yes sir.

Q. First I will ask you when these notices that have been introduced in evidence, came to your notice or knowledge, with reference to the date of their publication.

1014 A. As soon as the mail from Lincoln could bring them to Seward in other words the following mail after publication.

Q. Now you may answer the former question. Now I will ask you to state if you can, whether or not the Capital National Bank at the time it published these reports, which were introduced in evidence, was solvent or insolvent.

1015 A. It is my opinion that they were insolvent.

Q. At what time?

A. I put it, at all times. They were insolvent the day they assumed to do business under the name of the Capital National Bank. They had sustained lossed and had bad paper at that time which would more than wipe out their capital stock.

Q. You were speaking yesterday something about cards stating the condition of the Capital National Bank, which were issued in addition to these published notices, you may state what are the facts in reference to that.

1016 A. It was a custom of the Capital National Bank to send out what we term a condensed statement, it was generally in card form and when it wasn't it was on a small slip of paper. And they always mailed us one of these statements.

Q. Did those cards contain anything else besides the statement of the condition of the bank?

A. The names of all officers and directors.

Q. Were the names of the directors on those cards signed by the directors or printed?

A. Printed.

1017 Q. Were the names of all the officers and directors of the bank on those cards?

A. That is my recollection, the officers and directors.

The COURT: The names of the directors and officers were at the top as a sort of heading?

A. As a rule, and sometimes there would be just the heading of the bank at the top, and then would follow the stat-ment, and then the officers and directors below. They would change the form a little.

1018 Q. I will ask you to state whether or not an inspection of the books of the Capital National Bank would have disclosed any of the irregularities to which you have testified, as to the variations between the books and its actual condition?

A. Yes sir.

Q. I will ask you first what has been your experience in the keeping of books of a bank, and your knowledge concerning that?

A. I have had about eighteen or nineteen years experience in the banking business and I believe I am competent to judge of any set of books, bank books.

Q. What experience have you had in examining bank books and comparing stat-ments with the actual condition, and inquiring generally into the condition of banks as shown by the books themselves, and as compared with the actual condition as it existed?

A. You are speaking of the Capital National Bank?

1019 Q. No banks generally.

A. Oh, I never had a great deal to do with many banks over the country.

Q. Well with your own.

A. I know all about my own. And I think I know all about the books of the Capital National Bank, I have gone all over them.

Q. Have you found any irregularities other than those you had testified to during your personal examination?

A. Yes sir, I have testified to only a small per cent. of the irregularities.

Q. You may name in a general way some of the other things you found in your examination of the books of the bank, the Capital National Bank and the Marsh National.

A. They are almost too numerous to mention, in that way.

Q. Well just in brief form, state some of the matter you have found.

1020 A. I believe I testified to the erasures in the Stock & Bond account. And they had a Bills of Exchange account, which was created by fictitious entries, and it run a little while and it was wiped out with some fraudulent notes, which were put in the bank and carried for a short time.

And in regard to their bank accounts, I am satisfied that there wasn't a month that that bank ran an account with any bank where it was run correctly. They were all the time making fraudulent charges to cover up fraudulent deals, and then it would remain there a short time and then they would have to shift them to some other form. They had an account there by the name of Bills of Exchange, which I consider was principally a dumping ground to cover up their rascality,—there were a certain amount of legitimate transactions that were carried through that account, but the bulk of

that account from an examination of the books, I would term it a dumping ground. It was a fraudulent account in all ways.

Then the credit of One hundred thousand dollars in the State Treasurer's account in December 1889 was a steal of one hundred thousand dollars, which threw the books out of balance for a little over three years. I mean by that was out of balance every day for over three years to the extent in round numbers of $100,000.

1021 Q. Was it hard to detect that difference?

A. No sir any man of good sense, would not have to be a bookkeeper to know that the books were out of balance one hundred thousand dollars. You may take the certificate of Deposit account, there was a thing that a blind man could almost see. They would issue a certificate of deposit, we will say for one hundred thousand dollars, and put $5.00 in the bank and enter it up on one book as One hundred thousand dollars and on another book as five dollars.

Q. Do you mean to say they did that?

A. Yes sir, the books will show that. And the books will show,—I think I testified yesterday in regard to the forty thousand dollar certificate, where they had filled out the stub and then just drawn a line through it. Nothing in the certificate of deposit book, that line is left blank. They would pay it and charge it at forty thousand dollars.

1022 A. It was divided between Mosher and Outcalt. Mosher takes $25,000 and Outcalt takes $15,000 of it, credited to their personal accounts.

Mr. BURR: On the books of the bank?

A. Yes sir. And also in the certificate of deposit account there are a great many certificates issued where the stub book in both name and amount does not agree with the name, or the amount carried onto the other books of the bank, neither do they agree with the amount for which the certificate itself was issued, or with what the certificate itself was paid out at. In this account alone that bank was defrauded out of in round numbers three hundred thousand dollars, in other words that amount of money was just stolen, taken right out of the bank.

Q. What examination of the books and papers of the bank would be necessary to obtain those irregularities?

1023 A. Simply a comparison of the stub books, with the books of the bank. The certificates themselves, after they had been paid, with the books of the bank. The certificates will show in many cases thousands of dollars where it is issued and paid, when the books of the bank show it is only issued for a trivial sum, say five ten or fifty dollars, and carried onto the books at that amount. It is the easiest thing in the world to be detected by anybody of half brains.

Cross-examination.

By Mr. DEWEESE:

Q. How old were you when you commenced banking?

A. Oh past 21.

Q. Had you ever clerked for anybody previous to that?
A. Been in a bank some.
1024 Q. What bank?
A. State Bank of Nebraska.
Q. Was that finally merged or changed into the Jones National Bank?
A. No sir it was the present State Bank.
Q. Here in Seward?
A. Yes sir.
Q. Your bookkeeping has been of your own books I suppose in the bank?
A. Yes sir.
Q. You have never been engaged in the profession of accounting or making a public auditor or accountant in any way?
A. Only in a friendly way, I have looked over books at the request of my friends.
Q. When did the Jones National Bank start in business?
A. 1883.
Q. Here in Seward?
A. Yes sir.
Q. Was the Marsh National Bank doing business then in Lincoln?
A. I presume it was, we never done any business with the Marsh National.
Q. Didn't have any deposits there?
A. No.
Q. Did you have any on deposit with the First National of Lincoln?
A. No sir.
Q. Nor any other bank in Lincoln.
A. No sir, the Capital National Bank was the first account the Jones National Bank ever had in Lincoln.
Q. When did you first start that account with the Capital National Bank?
A. My memory is somewhere in 1885.
1025 Q. After you opened up the Jones National?
A. Yes sir.
Q. And you continued to keep your account there, ever since, up to the time of the failure?
A. Yes sir.
Q. What rate of interest did you get on your deposits there?
A. Two and three per cent.
Q. Two per cent.—what made the difference between two and three per cent.?
A. I spoke that way. I think the early part of it was three per cent. and the latter part two.
BURR: Two per cent. per month or per annum?
A. No, on the bank balance.
BURR: Daily balance?
A. No monthly balance.
Q. What rate were you getting at the time the bank failed?
A. I think two per cent.

Q. Did you hold any of your deposits by virtue of certificates of deposit?

A. No sir.

Q. Your account was subject to check any day I suppose.

A. Yes sir.

Q. I understood you to say that the Marsh National bank lost ten thousand dollars on the Marsh Collection account, is that correct?

A. Marsh Bros. & Mosher collection account.

Q. And how was that lost do you know?

A. Yes sir, it was on a transfer. The Marsh National Bank was a continuation you might say, or assumed the business of Marsh Bros. Mosher & Co. and when Marsh Bros. Mosher & Co., closed their business that day, they balanced their book and the balance
1026 was all transferred into a new set of books.

Q. Do you mean to state that as a fact?

A. Yes sir.

Q. Marsh Bros., Mosher & Co. did not run a banking business did they?

A. That is what the books show they did.

Q. Weren't they mere brokers in collecting for the Marsh Manufacturing Company?

A. They did that, and the books show they received deposits and issued drafts, and done a general banking business.

Q. Well you say this ten thousand dollars was lost in the account because it was transfered to the Marsh National Bank?

A. Yes sir, it was transferred ten thousand dollars short.

Q. So that the Marsh National didn't get anything.

A. No sir, not for the ten thousand dollars.

Q. What did the Marsh National have to show in place of that, if anything, on its books?

A. It was manipulated, covered up somewhere.

Q. You don't know how?

A. No sir. (Let me have my minutes.) I believe I do. (Witness examines minutes.) There was ten thousand dollars erased from Marsh Bros. & Mosher collection account and this ten thousand dollars was added to the Omaha National Bank by simply prefixing the figure "1" to the account of the Omaha National Bank.

Mr. BURR: Figure "1" in what column?

A. It would be the ten thousands column.

Q. Why did you charge this to the Capital National Bank?

A. It is a fraudulent charge.

1027 Q. The Capital National Bank never got it.

A. You misspeak, you mean the Omaha National Bank, don't you?

Q. No, the Capital National; how is it that you figure that the Capital National Bank lost this ten thousand dollars?

A. I haven't so stated.

Q. Have you included it in this schedule of losses, you gave a list of losses, in your first item was this ten thousand dollars that the Capital National Bank had sustained?

A. Yes sir, that is correct.

Q. How do you get that into the Capital National Bank?

A. The Capital National and the Marsh National were one and the same thing, only they changed the name from Marsh National to the Capital National Bank.

Q. This loss was sustained prior to the organization of the Capital National bank.

A. The Capital National was never organized, it was the Marsh National Bank, simply a change in the name only.

Q. That is your opinion. Have you examined the minutes or records?

A. Yes sir, that is what the books show.

Q. Do you mean to say that these defendants that are sued here were connected in any way with that Marsh National Bank, except Mosher and Outcalt?

A. I don't believe they were, no sir, but that wouldn't make any difference.

Q. Then why do you count this ten thousand dollars as a loss to the Capital National Bank?

A. Because it was a loss to the Marsh National Bank, and the Marsh National,——

Q. Whatever the Marsh National had sustained, why you think the Capital National Bank had sustained?

1028 A. Yes sir, because it is the same institution.

Q. Then if you say there is a false charge to the Omaha National Bank, how was that disposed of?

A. I never followed it up.

Q. If nothing went to the Omaha National, and nothing went out of the Marsh National, it is simply a matter of marks and figures isn't it?

A. In part, that is in getting away with it.

Q. Well did that same difference exist between the Omaha bank's and the Capital National bank's account at the time of the bank failure?

A. Oh no.

Q. What became of it then, you don't know what became of it?

A. No sir, it would take quite a while to follow down all their crooked trails.

Q. You say there was a loss of thirty thousand dollars on account of the Stock & Bond account?

A. Yes sir.

Q. And you figured that loss was sustained because the thirty thousand dollars in the Stock & Bond account on the Marsh Books was erased and added to the Bills Receivable account on the same books, the same bank's books, do you?

A. In part, yes sir.

Q. Is that the only foundation you have got to say there was any loss in that account?

A. No sir.

Q. What have you got?

A. If that was a legitimate transaction, the books of the bank

would show it. What I mean by that, if they had any Bills
1029 Receivable there that they were carrying in the bonds account, or bonds that they were carrying in bond account there would have been an entry through the journal which would have showed that, and the Bills Receivable would show it but as this account is kept it is simply the use of a jack-knife and a pen.

Q. The jack-knife erased from the Stock & Bond account and the pen added to the Bills Receivable account?

A. Yes sir.

Q. Now was there anything lost by that?

A. Yes sir, because when that stock and bond account of $30,540.00 was created there was $30,540 taken out of the bank.

Q. How do you know there was?

A. The books of the bank so show it, on January 6th, 1882 April 21st 1882, July 24th 1882 December 29th, 1882.—there is four charges of $7,500 each that make up $30,000 of this stock and bond account.

Q. And because it was transferred by the use of a jack-knife and pen from the stock and bond account to the Bills Receivable account you think the bank lost it?

A. To be honest with you, they didn't have anything to transfer.

Q. Then the four items you speak of never went in?

A. The money went out to create this account.

Q. And the reasoning you give on that, applies to all your statments here, about these different accounts, is that the kind of reasoning you base your stat-ments on?

A. No sir.

Q. What other kind have you that will apply to this thirty thousand dollar erasure and addition, erasure from one account and addition to the other?

1030 A. As I stated the books show that there was thirty thousand dollars used of the bank's money when this account was created, and when it was wiped out it was done with the use of a jack-knife.

Q. This Capital National Bank wasn't in existence at that time, nor the Marsh National either.

A. No, these three banks were continuations of one another, you can follow this account from the time it is created until it is wiped out and it will carry you along until you get into this bank.

Q. Did you examine the Bills Receivable books to see if thirty thousand dollars of Bills Receivable went into the bank at that time, at the time this erasure of bonds, and addition to Bills Receivable was made?

A. The books show nothing, it is simply blank.

Q. Have you seen that book?

A. Yes sir.

Q. Have you seen that Bills Receivable book?

A. It couldn't be on the Bills Receivable book unless it passed through the journal.

Q. Did you ever see the Bills Receivable book?

A. No, that is one of the books that they stole.

Q. Who stole it?

A. I couldn't say who, I didn't see them. I mean the officers of this institution, that had charge of it, when it went into the hands of the government, there was a lot of these things gone.

Q. So you have never seen the book to say whether there was any entries made or not, the one that was stolen?

1031 A. No I never saw that Bills Receivable book. I have seen all the other books, the regular books of the bank that should show this transaction.

Q. You don't know what Bills Receivable it was that went in at the time this charge was made?

A. The thirty thousand dollars?

Q. Yes sir.

A. The books show none.

Q. How did they balance if they showed none, were the books out of balance at that time, the Bills Receivable book?

A. That is the book, that is the Individual Balances, it is a memorandum book.

Q. Well if there was none went in, did that throw the books out of balance then?

A. You are speaking of the general books of the bank now are you?

Q. I suppose so, yes.

A. No sir, the general books of the bank were balanced. You take thirty thousand dollars off of one place, and put thirty thousand dollars in in another place and your books will balance just the same.

Q. And all the foundation you have got for that loss is that there was an erasure in the Stock & Bond account, and an addition of the same amount that was erased added to the Bills Receivable account.

A. That together with the nature of the transaction. It is not done in a business way, the way that a genuine transaction would be done.

1032 Q. That is it is not done in the way that you would have done it.

A. It is not done in the way that any bookkeeper, any banker would have done it, and done it honestly.

Q. Do you know who did it?

A. No sir.

Q. You spoke of the Bills of Exchange account amounting to $29,968.00 being a loss to the bank.

A. Yes sir.

Q. When it was lost what took its place?

A. Three forged notes.

Q. Amounting to how much?

A. Amounting to $29,968.00.

Q. What date?

A. July 29th, 1886.

Q. What I want is the date when the Bills of Exchange was credited with these notes of $29,968.00.

A. That is the date I just gave you.

Q. Whose notes were they?

A. The First National Bank of Kearney, $10,000.00. The First National of Hastings, $10,000.00 and F. S. Johnson & Co. of Milford $9,968.00.

Q. When were they taken off of the books?

A. I couldn't tell you without looking at the books.

Q. Are these notes or the renewals therefor included in your schedule of worthless paper?

A. No sir.

Q. How do you know?

A. Why they wasn't on hand at that date.

Q. You didn't trace them out in any way?

A. Yes sir.

1033 Q. What squared this account then?

A. What account.

Q. For these notes.

A. I couldn't tell you now sir.

Q. You don't know?

A. I didn't make any memorandum of it. I followed it until I found they were forged notes, and I stopped there and let the other fellows show the rest.

Q. How do you know they were forged?

A. Two of the parties teld me so. I think two or them have testified they never gave them.

Q. You spoke of certificate of deposit No. 17969 for forty thousand dollars, what was the date of that issue and payment?

A. There are two paid dates of this certificate. The first one is December 31st, 1888. The other one is January 7th, 1889.

Q. Have you examined the book that shows that, any book of the bank that shows such a payment?

A. Yes sir.

Q. I call your attention to certificate of deposit No. 19272 when was that certificate paid?

A. I couldn't give you the exact date of the payment.

Q. Do you know whether the books show or not?

A. No I couldn't say. I know the certificate was deposited, I saw the original entry and the amount and the man's pass book for that certificate.

Q. It wasn't a book kept in the bank, it was some man's pass book. The state Treasurer's pass book.

Mr. BURR: It was a book kept by the bank then.

A. Certainly.

Q. I call your attention to certificate No. 21386, about

1034 which you testified yesterday, can you give the date when that was paid?

A. The register shows December 24th, 1889, the certificate of deposit register.

Q. That certificate was for how much?

A. That certificate was for fifty thousand dollars.

Q. And the individual balance book of this account, does the individual balance book show when this certificate was paid?

A. Yes sir.

Q. Do you know the date?
A. December 24th, 1889.
Q. And that is the date of the issuance of it, isn't it?
A. Yes sir.
Q. And the individual balance book shows the correct amount of fifty thousand dollars?
A. Yes sir, the stub shows five dollars.
Q. What is there wrong about the entry of fifty thousand dollars on the general books of the bank?
A. Beacuse one book shows it at five dollars. Another book shows it at five dollars, and another book shows it at fifty thousand dollars.
Q. All books of the bank show it at the correct amount. The stub of this certificate is not a book of the bank, it is merely a stub of that certificate.
A. It is one of the books of the bank.
Q. It is the stub of the certificate.
A. Yes sir. The register of the certificate is one of the books of the bank, and that shows it at five dollars.
Q. The balance book shows it at the correct amount?
A. Yes sir.
Q. You testified to certificate No. 24572.
A. Yes sir.
1035 Q. I understood you to say that the stub of that certificate showed the amount to be $641.60.
A. Yes sir.
Q. And the register shows $641.60?
A. No sir.
Q. What did the register show?
A. The register shows $1641.60.
Q. The register does?
A. Yes sir.
Q. Are you sure of that?
A. That is what my memorandum shows, Mr. Deweese.
Q. The balance book shows what amount?
A. $641.60, a difference of $1000.00.
Q. And the amount paid was what?
A. $1641.00.
Q. How do you know?
A. The books of the bank show it.
Q. The balance book of the bank shows it?
A. Yes sir, they are all itemized.
Q. But are you not examining the book in making that statement.
A. No, but I will if you want me to.
Q. I call your attention to certificate No. 24574, that was given to somebody by the name of Ashton, for $1500.00.
A. Yes sir.
Q. Do you know what the daily balance book shows that certificate to be, and the amount that was paid?
A. $1500.00.
Q. And that was the real amount of the certificate wasn't it?

A. Yes sir.

Q. So there was nothing wrong in the payment of that?

A. Only that the certificate register showed——

1036 Q. There was nothing wrong with the certificate, or the payment of the certificate?

A. No sir.

Mr. DEWEESE: That is all.

Redirect examination.

By Mr. THOMAS:

Q. Why do you say there was a loss of ten thousand dollars in the Collection account, what is your reason for thinking there was such a loss?

A. Because a collection account properly kept is always what we would term a credit account. And a collection account properly and honestly kept can never be overdrawn. This account which I speak of, Marsh Bros. & Mosher was an overdrawn account, to the amount of $14,573.32 and when they take ten thousand dollars away from it, they take ten thousand dollars away from a minus quantity, something that does not exist.

1037–1110 Q. Then in your opinion as an expert and based upon an examination of these books, and the way in which this account was treated was this account a valuable asset?

A. Why no sir. As I said, a collection account cannot be overdrawn if properly and honestly kept.

* * * * * * *

1111 Mr. C. E. YATES, called as a witness on behalf of the defendants and being first duly sworn, testified as follows:

Direct examination.

By Mr. DEWEESE:

Q. Were you a director of the Capital National Bank?

A. Yes sir.

Q. You may state how long you were director?

A. I couldn't say the exact time, but for a long while several years.

Q. What business were you engaged in?

A. Superintendent of Telegraph of the B. & M.

Q. During all of that time?

A. Yes sir, since 1873. That is I have been in Nebraska since 1873.

Q. What portion of your time did your duties as Superintendent of Telegraph take?

A. Why, I was out on the road the most of the time.

1112 Q. Out on the road?

A. Yes sir, building lines.

Q. Did you attend any of the directors' meetings of the Capital National Bank?

A. When I was in town yes sir.

Q. What arrangement was made if any toward looking after the securities, and the investments and the assets of the bank?
A. There were two men appointed.
Q. Who were they?
A. Professor Stuart and Mr. Holmes.
Q. What was their business character and capacity and experience?
A. A No. 1.
Q. What do you mean by that?
A. Why the best men there was in the city.
Q. What had these men, what character of business had these men been engaged in, personally, on their own behalf?
A. Loaning money.
Q. For years?
A. Yes sir.
Q. Wealthy men, were they?
1113 A. Very wealthy.
Q. I will ask you whether this committee made reports to the directors from time to time of their investigations of the bank papers and affairs?
Q. Did they make any report of their investigations of the assets in writing or verbally?
A. Verbally.
Q. At what time would they do this?
A. At a meeting of the board of directors.
Q. What inquiry was made of them, in reference to this matter, by the other directors?
A. Well, I couldn't say about the other directors, but I can say about myself.
Q. You are one of the others?
A. Yes sir.
Q. Anything that you know.
Q. Tell the fact, what inquiry was made by you, or in your presence of this committee in reference to this matter at the meetings.
1114 A. When I was out on the road, when I would come in, I would ask these men—I didn't mean if there was a meeting held when I wasn't there.
Q. I am asking you at the meeting when you were there, whether inquiries were made of this committee, and whether they reported what they had done?
A. Yes sir.
Q. Now I will ask you to state what was the character of such investigation and report with reference to the character of the assets.
A. There was a general discussion at the meetings in regard to the paper, and they would always take up each piece of paper and comment upon it, and claimed it was all right.
Q. That is, this committee would?
1115 A. Professor Stuart and Mr. Holmes at a meeting of the board of directors.

Q. Now you may state whether you knew, or had any intimation in any way of anything being done wrong in the bank.
A. No sir, surely not.
Q. You may state whether R. O. Phillips was one of the directors at the time.
A. He was.
Q. And is he dead?
A. He is dead.
Q. Mr. Hamer is also dead?
A. Mr. Hamer is dead, yes sir.
Q. And Mr. Stuart?
A. Yes sir.
Q. And Mr. Holmes?
A. Yes, all dead.
Q. He died before the others?
A. Yes sir.
Q. Now you may state whether any conduct of Mr. Mosher's or anyone else connected with the bank came to your knowledge, from anything you did or heard or investigated to have any influence upon your judgment concerning his integrity and his honesty or his ability as a financier, or the contrary.
1116 A. No sir, I had the utmost confidence in them. Never heard anything against their integrity.
A. Well I had the utmost confidence in them.
Q. Did you know of any frauds being committed by them in any way?
A. No sir.
Q. In the issuing of paper which was hid upon the books or the entering of any different amount from the real transactions, or anything of that kind, or of anyone connected with the bank in the same way.
A. No sir.
1117 Q. Well you may state whether you ever made any false entries or covered up anything, or hid the real transactions of the bank.
A. No sir.
Q. Did you ever know of any being done?
A. No sir.
Q. Did you ever hear of any being done?
A. No sir.
Q. I will ask you to state how much stock you had in the bank.
A. One hundred thirteen shares.
Q. How much of your private money was in the bank at the time of its failure?
Q. How much money did you deposit the day before the bank failed, in the bank?
1118 Q. What steps did you take to satisfy yourself of the soundness of the bank and of its management as conducted by Mosher and Outcalt, if any?
A. I always saw the bank examiner, made it my business.
Q. Every time he examined the bank?

A. Every time he examined the bank.
Q. What do you mean by saying you saw the bank examiner?
A. I made it my business to see him, I was on the road a good deal and I would meet him, he lived at Wahoo, and I would ask him,——
1119 Q. I will ask you if you are a bookkeeper?
A. No sir, I am not.
Q. Have you ever been a bookkeeper?
A. No sir.
Q. You have always had the one business of being Superintendent of telegraph lines?
A. Yes sir, and that of a dispatcher.
Q. And dispatcher?
A. Telegraph operator and dispatcher, and Superintendent of Telegraph.

Mr. DEWEESE: That is all.

Cross-examination.

By Mr. THOMAS:

Q. You say your have been Superintendent of the B. & M. Telegraph lines since 1883?
A. Yes sir, I have been to work for the company since '73.
Q. And have been continuously up to this time?
A. Yes sir.
Q. And you attended most of the directors' meetings?
A. I did when I was in town.
1120 Q. You attended the most of them in fact?
A. Well no.
Q. Don't the minutes show that you attended the most of them?
A. I always made it a point to attend the directors' meetings if I was in the city.
Q. These meetings were held at the bank?
A. Yes sir.
Q. You attended the meetings when the dividends were declared?
A. Not all of them.
Q. You received your dividends right along?
A. Yes sir.
Q. And you signed a great many of these reports?
A. Yes sir every time they made a report.
Q. And when you signed them you didn't know whether they were true or not?
A. Well I had confidence in the officers.
Q. You didn't know whether they were *ture*?
A. No, of course.
Q. You never made any inquiry, never examined the books?
A. No sir.
Q. Never counted the cash?
A. No sir.
Q. Never looked at the Bills Receivable?
A. No sir we had men to do that.

Q. You never looked over the real estate?
A. No sir.
Q. You signed the reports, that came to you without making any inquiries to know whether it was true or not.
A. Yes sir, I always made inquiry of the gentlemen that brought them down.
1121–1131 Q. Never examined the books?
A. No sir.

Mr. THOMAS: That is all.
Witness excused.

* * * * * * *

1132 Mr. D. E. THOMPSON, called as a witness on behalf of the plaintiffs and being first duly sworn testified as follows:—

Direct examination.

By Mr. ROSE:

Q. Are you the defendant David E. Thompson?
A. Yes sir.
Q. Where do you live?
A. I live in Lincoln.
Q. Were you ever director of the Capital National Bank?
A. Yes sir.
Q. Did you receive any pay or compensation for action as director of that bank?
Q. Did you receive any pay for acting as director in that bank?
A. No sir.
Q. Did you hold any other office, at any other time in that bank?
A. No sir.
Q. When did you become in any way connected with that bank? About what date?
A. I think it was in 1884 when it became the Capital National bank was the time I entered it.
1133 Q. How did you acquire your stock in that bank?
A. Bought it and paid for it.
Q. Paid the money into the bank?
A. Yes sir paid cash for it.
Q. In full?
A. Paid a premium for it.
Q. What rate did you pay?
A. I paid a premium of nine per cent. for it, when I bought it.
Q. Were you ever connected with the Marsh National Bank?
A. No sir, in no way.
Q. In any capacity?
A. No sir.
Q. Were you ever connected with the firm of Marsh Brothers & Mosher in any capacity?
A. No.
Q. Do you remember about the time the Capital National Bank was organized of anything being mentioned of Donnel, Lawson & Simpson?

A. I remember very well the matter was a subject of discussion. I think the first meeting we had after the organization.

1134 Q. How was that disposed of, whether that should be counted as an asset or not?

A. Mosher said——

A. That account came into the Capital National Bank at the time of its organization. At that time at that first meeting Mosher said "that is not an account, that rightfully belongs to the Capital National Bank, it was a loss if there is a loss, of the old institution and Outcalt and I will take care of that."

A. The Capital National Bank never had any loss on account of Donnell, Lawson & Simpson.

Q. What if any knowledge did you have at any time of the Capital National Bank's incurring any loss on account of the ac-

1135 count of Donnel, Lawson & Simpson of New York?

A. My only knowledge of that was the discussion of this account at the time of the organization of the Capital National Bank and Mosher and Outcalt saying at that time that they would see that that account was cared for, and they did do it.

Q. Now Mr. Thompson, at the time you organized, you say the Capital National Bank, were there entire, new directors taken in that had never been connected with the Marsh National Bank?

A. I think the whole directory was new, at the time of the organization of the Capital National Bank.

Q. How would it be with reference to Mosher and Outcalt.

A. Except Mosher and Outcalt.

Q. Do you know who had been the managing officer of the Marsh National Bank?

A. Mosher and Outcalt had been.

Q. The Capital National Bank succeeded to their good will and business?

A. Yes sir.

Q. Now in the organization of the Capital National Bank with a new directory, to what persons was the management of the new bank confided or delegated by the directors?

A. To the President and Cashier, Mosher and Outcalt, and to the executive committee that was elected for the purpose of supervising the management of the bank, and that committee was made up of W. W. Holmes, and Prof. A. P. S. Stuart.

1136 Q. Are you acquainted with what was the standing of C. W. Mosher at that time as a banker and business man in that community?

A. Yes sir, I am.

Q. Now what was it?

A. First class.

Q. Did you personally regard him as a capable banker?

A. I did. Everybody did.

Q. And as a man of integrity?

A. I did and everybody did.

Q. Do you know what at that time was the standing of R. C. Outcalt in that community?

A. He was the same as Mosher, except he wasn't looked upon as being as wealthy as Mosher was.

Q. What was his reputation for probity?

A. It was first class.

Q. Was he regarded by yourself as a competent, trust-worthy banker?

Q. State how you regarded him at that time, as a banker.

A. I regarded him very highly as a banker, and considered him and Mosher a very strong team.

Q. Were you acquainted at that time with W. W. Holmes and A. P. S. Stuart?

A. I had known W. W. Holmes 12 years at that time. I had known professor Stuart a lesser time, I couldn't say for how long, but for several years.

Q. Do you know what W. W. Holmes' business had been prior to that time?

A. Money loaner.

1137 Q. Do you know what Prof. Stuarts business was?

A. He was a property owner and money loaner at that time.

Q. What was the character and reputation of Mr. Holmes as a business man?

A. Both Holmes and Stuart was considered the very best in Lincoln, their judgment was considered always good, they were both wealthy men and had made their money by managing money.

Q. Have you resided continuously in Lincoln since 1884 or 1885?

A. Yes sir, I have.

Q. During any portion of the time from the organization of the Capital National Bank, until January 1893 had you been absent from home?

A. Lincoln has been my only place of residence, but I have been three times in Europe on account of my health. I had been away from home very much on account of my health.

Q. When were you in Europe?

A. I was there a good part of the year 1885 and a good part of the years 1888 and 1890.

Q. During the period of your absence was your absence known to the rest of the directors?

A. Yes sir.

Q. And all consented to your being away?

A. Everybody in Lincoln knew of my business.

Q. Except at the periods of your absence did you as a director of the Capital National Bank take any part in the affairs of the bank in any way?

A. Yes sir.

Q. Now so far as the duties of administration devolved upon you as a director, state how and in what manner you discharged them.

1138 A. Well first I want to state, I want to say that I am not a bookkeeper I never had an education except about five

years as a child, never went to school except about five years as a child. That would make it impossible for me to know anything of the books of the bank. I think I never was in Lincoln at a directors meeting, or on the day of a directors meeting that I did not attend it. There never was a time from the time I went into that bank until it closed that I did not take every opportunity after an examination by the bank examiner to ask him of the condition of the bank. Hayden was the bank examiner soon after the organization of the bank and I knew him well, after Hayden came Griffith, and I knew him well. They were both friends of mine and after each examination, when I saw those men, I always asked how they found things in the bank.

A. Their answers were always to the effect that the bank was al- right, there never was any criticism by either of those men to me of the condition of that bank.

1139 Q. Now Mr. Thompson at the directors meetings, what if any steps were taken by you to inform yourselves by statements of the officers or otherwise as to what was the condition of the bank and what had been its earnings?

A. At every directors meeting that I attended, as I have said before I think I never missed one when I was at home, the executive committee or the committee whose duty it was to look after the affairs of the bank were asked how they found things. They were asked for their stat-ments that they always made on a slip of paper, that was laying there on the Directors table. The officers of the bank prepared their stat-ment of the gross and net earnings of the bank and it was there that I got all my information of the condition of the bank from those two sources.

Q. Up until the suspension of the bank had you still believed in the capability and integrity of the President and Cashier of *of* this bank?

A. I never was more astonished over a business matter, of any kind in all my life, as a man that I was over the failure of that bank. I was in Terra Haute when the bank failed.

1140 Q. Now Mr. Thompson, you may state whether the confidence, that you originally had in Mr. Mosher and Mr. Outcalt, and in their ability to manage the affairs of the bank continued up until the suspension of the bank?

A. I never had occasion to question the integrity of either of those men, the business integrity, up until the failure of the bank. I had had some little trouble, personal trouble with Mosher, but I had never had any business trouble or reason to question him.

Q. What other occupation did you have, if any, from the time of the organization of the bank until the time of its suspension?

A. From 1884 until 1890 I was Superintendant of the Burlington road. In 1890 I left the Burlington road and took charge of the Lincoln Gas Company, and the Lincoln Electric Company and I was immediately after that,—well during all of that time, I will correct myself in this. I said from 1884 until 1890 I was Superintendent of the Burlington road and I was previous to those years the owner of a string of hotels and those things were all that I had

in the way of business until 1890. In 1890 in addition to the hotels which I owned and have ever since I took c-arge of the Lincoln Gas Company and the Lincoln Electric Company and
1141 the Farmers & Merchants Insurance Company as an active officer. It was organized in 1885 and at that time I was elected Vice President, but I had no active charge of it until 1890.

Q. What knowledge did the other directors of the bank have of your outside business?

A. They all knew of it.

Q. How many miles of the Burlington railroad were under your charge as Superintendent?

A. At the time I left the road in 1890 there were eleven hundred miles.

Q. How many hotels did you operate during those years?

A. Nine.

Q. How closely did those enterprises occupy your time and how exacting was the labor thrown upon you?

A. Well I was a very busy man through it all and of necessity away from home a good deal of the time, but at home as much as I could be.

Q. After the year 1890 when your office of Superintendent of the Burlington terminated, how closely did your enterprizes occupy you in the insurance company and gas company and electric light company and your hotels?

A. Well they occupied all of my time, but of course I
1142 wasn't taken away from Lincoln as much as when I was Superintendent of the road. The hotels took me away some, but not as much as the hotels and road together did.

Q. Did you before the suspension of this bank become interested in other banking enterprises in Nebraska or elsewhere?

A. Yes sir, at the time and before I left the Capital National Bank or really ceased to be interested in it more than in a very small way, I became Vice President of the American Exchange Bank in Lincoln.

Q. Connected with a bank at Aurora?

A. Yes I organized the Aurora State Bank, I think that was about 1890 we organized there, but I couldn't just say off hand. I have been President of that bank ever since its organization and am now.

Q. What information did you have if any prior to the suspension of the Capital National Bank, that C. W. Mosher under the name of the Western Manufacturing Company was obtaining funds from the bank, or putting the Western Manufacturing Company paper through the bank for the purpose of re-discounting or otherwise?

A. I had no knowledge of it at all.

Q. Was the matter of making discounts to Mosher under the name of the Western Manufacturing Company a matter which ever came before the Board of Directors or which you were cou-seled about?

A. No sir.

Q. What knowledge prior to the suspension of the bank, did you have that Mosher in his personal name was allowed to put in $85,000.00 paper and Outcalt $75,000.00 of their own notes?

A. I never knew it at all until McFarland the first receiver told me of it.

1143 Q. What knowledge did you have of the overdraft of the firm of Mosher & Outcalt and of the firm the Western Manufacturing Company and of C. W. Mosher personal- prior to the time of the suspension?

A. I had no knowledge at all of it.

Q. Were the overdrafts a matter within your control as a director?

A. Not at all. The officers of the bank and the Executive Committee had absolute control of that bank all of the time. The directors elected the executive committee purposely that they should look after it.

Q. Did you have any knowledge or information or intimination from any source prior to the suspension of the bank, that it was in any financial difficulty or had sustained any losses of any consequence?

A. None at all except the little matter that would always develop at each directors meeting. Of course a bank is always making losses, but there were never any losses made there that came

1144 to our attention that were at all serious.

Q. Did you have any accounts which you absolutely controlled at the time of the suspension of the bank?

A. Yes sir.

Q. Among other accounts mentioned here by Mr. Whitmore, when he was testifying is an account of "C. W. Mosher Treas." do you know whose account that was?

A. I do.

Q. Whose was it?

A. The Farmers & Merchants Insurance Company.

Q. Who control-ed the account?

A. I did.

Q. Did Mr. Mosher have any authority to draw checks against it?

A. None whatever.

Q. Did he in actual practice, ever draw a check against that account?

A. He never did draw a check against it, never had a right to.

Q. Did you ever receive or accept a credit to that account, or have a charge, except for funds that were absolutely bonafide, in connection with the insurance company's business?

A. No I never did.

Q. What were the balances in that account at the suspension of the bank?

1145 Q. There is a purported letter of date February 19th, 1892, alleged to have been signed by yourself, and addressed to the Comptroller of the Currency, in which, mention among other things is made of the paper of E. W. Mosher, and among other things the letter contains these words, "we would say in regard to the item 50950.28 E. W. Mosher that this amount appears on the books to be a loan to him endorsed by C. W. Mosher, and secured collaterally by notes of many individuals in smaller amounts aggregating the

same amount made to E. W. Mosher. The facts are that this account is made up with small notes taken in a territory from which comes the best products of the state, and considered a good field for a line of loans and E. W. Mosher was authorized to get good paper of this character for the bank, and such notes being made in the name of E. W. Mosher" etc. What do you know about that transaction, and what did you know about that transaction?

1146 A. May I be permitted to simply say what I know about it?

Q. Yes sir.

A. These Mosher notes came about in this way. Mosher and a man by the name of Stark had been doing business for themselves in York county, without consulting any of the directors, so far as I know, anyway, never myself. The Capital National Bank, or Mosher commenced sending money up there for his brother E. W. Mosher to loan for the Capital National Bank. In a little time it developed that that was being done. It was being done before any of us knew anything about it. There was then a protest against his sending money away from home to his brother to loan. And the outcome of the protest and the consideration that was given it in this directors meeting was an agreement, and an instruction to Mosher that that thing could only be continued if he wanted to endorse paper for the amount of money that was sent to E. W. Mosher to loan for the bank. These Mosher notes that were there in the bank were not a liability of E. W. Mosher's at all except as I have related. The money was loaned for the bank and E. W. Mosher's note was sent there each time money was sent to him to loan and that note was endorsed by C. W. Mosher and to all of that was collateral on which the money was loaned in York county. I don't think E. W. Mosher ever owed the Capital National Bank anything, or much of anything. If he did, I didn't know it.

Q. What was the explanation of sending the money there, that was given to you as a director, at the meeting that you refer to, by Mr. Mosher?

1147 A. The reason was a good one, and the only one that the directors finally consented to the thing continuing, that a larger rate of interest could be gotten in those western counties than could be gotten there in Lincoln for their money, that was the first explanation that Mosher gave, and it was because of that that the directors finally agreed to its continuance, on his agreement to stand himself, liable.

Q. Have you given the explanation then of how Mr. E. W. Mosher and C. W. Mosher happened to be on those notes?

A. Yes I have.

Q. What did you know about this "Small" transaction that is mentioned also in some of the testimony, and also in this identical letter?

A. Well it was a matter of discussiom more than one at our meetings there in the bank. I think I know all about it.

Q. You may state.

A. Small was a banker at Fairfield down in Clay county running

a little private bank, I think it was a private bank, I don't think it was even a state bank, and he was doing business with the Capital National Bank in Lincoln, and he finally failed, and when he failed he turned over to the Capital National Bank a lot of lands, deed to the lands and a lot of horses, he was running a horse ranch down there, to secure the Capital National Bank. Somebody questioned the right of the Capital National Bank to take that land on a straight deed. There were a lot of mortgages on the land and the Capital National Bank was carrying it, and expected to pay
1148 the mortgages out and, become the owner of the land, and with that and with the horses to pay the debts of Small to the bank. But somebody questioned their right to do that, and took the thing into court and the outcome of that was that those deeds were simply mortgages held by the bank as security for its loan and the court ordered the land sold and the Capital National Bank paid, and Small's equity was to go to the balance of his creditors. And the Capital National Bank never lost anything on account of the "Small" loan. I wouldn't say positive that they never did, but if they did, they didn't lose much, it was very little.' And the reason I say, I think they never did was because I remember very well of both Mosher and Outcalt saying that there never would be any loss there, but if there was it would be so little that it would be of small consequence.

Q. Did you ever make any entries upon any of the books of the bank?

A. Never one.

Q. Did you ever order, or direct any person whomsoever, servant or otherwise of the bank, to make any entries of any character upon the books of the bank?

A. No, never one, never.

Q. Ever issue any certificate of deposit on behalf of the bank, or request anyone else to do so. For just your mere order?

A. Never, I never did anything for the bank except to meet with them as a director and consider things that were brought
1149 to our attention and to help elect the executive committee and officers.

Q. What if anything, did you know in the year 1891 about any certificates of deposit having been issued on account of the Nebraska Relief Fund.

A. Nothing at all.

Q. What if any, knowledge did you have prior to the suspension of the bank that any false entries of debits or credits were entered in any account on the books of the bank by any officers or servants of the bank?

A. None at all.

Q. What if any knowledge did you have in any instance, of any varying between the amount of any certificate of deposit issued by the bank or any of its officers, and the corresponding entry of the amount upon the bank's books, what if any discrepancies if any, in that respect did you know about?

A. I never had any knowledge that anything was wrong there

until after the bank closed, and my first information came from Griffith. I met him on the train almost immediately after the failure of the bank, on the train between Lincoln and Ashland.

Q. When did you meet Griffith with reference to when the bank failed?

A. Griffith, I think live- in Wahoo. What I want to do, if I may be permitted to do it is to say what I said to Griffith at this time, and having a right to do it, as I think because of
1150 what I said to him, and what he said to me before the failure of the bank.

Q. This information came to you subsequent to the failure of the bank?

A. Yes sir.

Q. Did you know about any irregularities or false entries of any character whatever prior to the suspension of the bank?

A. None at all.

Q. An alleged stat-ment has been produced here, purporting to have been made to the Comptroller of the Currency and published, and to have been signed December 15th, 1892 by C. W. Mosher, R. O. Phillips and verified by R. C. Outcalt, on the condition of the Capital National Bank at the close of business December 9th 1892 what part if any did you take in the preparation or publication of that stat-ment?

A. None at all.

Q. Were you counseled about it in any way?

1151 A. No sir.

Q. Do you have any recollection of having signed a statment to be forwarded to the Comptroller of the Currency, purporting to give the condition of the bank at the close of business December 28th, 1886?

A. I have no recollection that I did, and I think I did not.

Q. Now I want to ask you Mr. Thompson, if you have any recollection of having signed or ever signing a copy of a notice to be published sent to a newspaper and published of signing your name to any such a notice?

A. I never did that.

Q. If any copy of that kind bore your name, you did not put it there?

A. No.

Mr. Rose: That is all.

Cross-examination.

By Mr. Thomas:

Q. You signed various reports of the condition of the bank while you were one of its directors?

A. Yes, I think I did.

Q. And do you know how many papers you signed in that connection?

1152 A. Of all kinds do you mean?

Q. At any one particular time, that a report of the con-

dition of the bank was made, how many times did you have to sign your name as director with regard to that particular report?

A. I think only once.

Q. Are you positive of that?

A. You say how many times would I sign one of those reports?

Q. Yes.

A. I think I would sign it but once.

Q. What is your bank in Aurora?

A. A State bank.

Q. How many reports are made when the Comptroller calls for one at a certain day, do you know how many papers are made out with reference to that report?

A. No, I do not.

Q. Don't you know that you have to sign your name more than one time in connection with making a report of the condition of a bank?

A. I think not, unless there is a duplicate of it, or something of that kind.

Q. Don't you remember that you had to sign your name to a report on this form? (Counsel exhibits to witness a paper.)

A. Well if that is a report. Now isn't that,——

Q. Do you remember of signing one of that form?

1153 A. I don't pretend to say that I never signed any of those reports, and I think is the correct form of those reports, that is my judgment.

Q. Do you say that you did not sign a report of the condition of the Capital National Bank to the Comptroller under date of December 28th, 1886?

A. I think I did not, and I will tell you why.

Q. You may state.

A. Well that is rather a long story but this is it. In 1885 I went to Europe a very sick man, so sick that nobody thought I would come back alive. I got back in the early winter of 1885 and during the next year this road here was under construction from here up to the northwest. I had charge of the construction. In the early winter of 1886 which was as I can best remember along about January or December we were blockaded with snow up in there and I was away for a long period of time and that came very near doing me up again. It came very near costing me my life, but at the same time I was up there attending to my business. Now I expected to be able to produce the records of the railroad company to show whether or not I was in Lincoln, but all of their records have been destroyed up to 1894 in regular conformity to their rule to destroy everything that gets so old. So all I have is my recollection and my recollection is based upon the conditions as I remember them of the winter of 1886 and 1887 during those months. I know that winter

1154 came very near finishing me, I didn't expect myself to get out alive.

Q. But you remember of having signed other reports?

A. I signed them whenever I attended a meeting, I always signed them if they were brought to me. I say when I attended a meet-

ing,—The directors at a meeting didn't always sign, because the requirements of the government didn't require all of the directors to sign, but whenever I was there and it was presented to me, I always signed them.

Q. But you didn't examine the assets of the bank to ascertain if the report correctly stated them?

A. I was always willing to sign any stat-ment of the condition of the bank from the representations that were made to me by the Executive Committee and the officers of the bank. I couldn't if I had wanted to have done so, made an examination into the condition of that bank and told anything about it, because I know absolutely nothing about bookkeeping, and I did there pre-
1155 cisely what I have always done with the different kinds of business I have been associated with and at the head of. Now I have been at the head of some very large institutions in this state and what I did there, I have always done.

Q. In your bank at Aurora you never examined its notes?

A. I never examined a note as long as I have been President of that bank, we have an executive committee as they did in this bank.

Q. You have never looked at the assets yourself?

A. I never have, the only thing we look at there, is when we have our annual or semi annual meetings the notes that are considered questionable are brought on the table by the committee and discussed and at that time we settle what shall be done with them.

Q. And if the men who were managing that bank were so disposed they could put in fraudulent paper and you wouldn't know it?

A. Yes sir.

Q. And they could issue certificates of deposit for one amount and have the books show another one and you wouldn't know it?

A. How could any man tell that.

Q. And they could issue certificates of deposit for one amount and have the books show another amount and you wouldn't know it?

A. Yes and for all any man in the bank might know.

Q. And so far as you know the bank at Auroro of which *are* are President may be at this time wholly insolvent?

A. It may be if the men there are thieves like Mosher and Outcalt, it may be in the same condition.

1156 Q. And do you sign stat-ments of that bank?

A. I have signed them just as reported to me by these five men.

Q. Then you sign these reports and take these men's words for it, and send them out to the world as correct?

A. Yes and you do to-.

Q. You sign your name irrespective of the facts you don't know what the true conditions are.

A. How could I know better?

Q. Will you please answer the question?

A. I am answering the question by asking you one.

Q. I simply want you to state this that you are signing stat-ments of the condition of that bank and are taking some one else'- word entirely for the truth or falsity of the report?

A. That is what I am doing, and I couldn't do different if I tried.

A. And that is what you did with the Capital National Bank.

A. Yes sir.

Q. And you didn't know at that time whether the report was true or false.

A. I couldn't have known.

Q. You didn't make any effort to find out except by asking some one else?

A. I am going to answer that question right or not at all now.

Q. I have a right to an answer to that by Yes or No. You didn't make any effort to find out except by asking someone else. Can you answer that question by Yes or No?

A. That question cannot be answered by Yes or No, because I did not ask someone else, they made their regular written statements of the condition of that bank, and it was from that that I knew the condition of it.

Q. Can you produce any of those written stat-ments?

1157 A. No sir, I don't suppose I could.

Q. The records of the meetings do not disclose that any such report was made.

A. I presume the record of the meeting would indicate the action of the executive committee.

Q. Were you there when the minutes were read and approved?

A. I would think that the records of the meetings would show that the executive committee had examined the assets of the bank and found them so and so, that would be my recollection of it.

Q. You never looked at them yourself?

A. No sir.

Q. You never looked at the cancelled certificates of deposit?

A. No, I never did, and how could I tell if a certificate showed $641.00 and the records showed $1641.00?

Q. Do you suppose that a certificate of deposit actually issued, that the certificate had been issued for $100,000 and the records showed $5.00?

A. How could I tell?

Q. Suppose that certificate has been paid and is in the bank do you suppose you could compare them and see if they agreed in the amount and name?

A. Yes but I will venture to say that a man that would do such a thing as that would not be apt to leave it where I could find it.

Q. Do you remember of signing reports of the kind I hand you here? (Handing witness a printed form.)

A. What is this?

Q. A printed blank sent out by the Comptroller of the Currency.

A. Is this the report that goes to the Comptroller?

Q. Yes sir.

1158 A. And the other is to-? Well if you have got one of those things that has my signature on, I would like to see it.

Q. Will you swear that you ever signed one?

A. I will swear that I have no recollection of it, that thing there (indicating) is a regular stat-ment, I think, to the comptroller.

Q. Don't you remember that every time a report is made of the condition of a bank, that you make out a detailed report, and at the same time also a brief one, like this one I show you, and the last one I show you contains the proof of the printer showing that it has been pu-lished, before it is sent in to the Comptroller.

A. I don't think I ever signed a report of that kind.

Q. Will you swear you never signed one like that?

A. I swear that I have no recollection of it. I have no recollection of signing any reports to the comptroller except one. This one I have no recollection of ever seeing it before.

Q. I refer to Exhibit No. 972 and I will read this to you, "The banks are respectfully notified that by law their published reports must be copies of the originals, and they must therefore state separately the amount of deposits subject to check, of demand and time certificates of deposit and of certified checks outstanding. Certificates of Deposit representing money borrowed must be included in and published as Bills Payable. Failure to do this may subject a bank to the expense of republication." Do you remember seeing that on any report?

A. No sir, I don't think I ever saw any report of that kind. I will also tell you that I am giving you my recollection, and I will give you my opinion if you want it.

1159 Q. I will ask you this question,—when you were asked by any of the officers of the Capital National Bank to sign reports you signed them didn't you?

A. Yes when I was there, I will say I did.

Q. That is when the Comptroller would make a call for the condition of the bank at any particular day, then the officers, or some one connected with the bank would make out the necessary papers and you would sign them at that time.

A. Yes I never refused to sign a stat-ment of the condition of the bank.

Q. And whatever papers the Comptroller required to be signed by the Directors with reference to that particular report, you signed?

A. No I wouldn't say that.

Q. Will you say you did not?

A. I will say this. This thing here is a stat-ment of the condition of the bank that goes to the Comptroller, now would an officer of a bank consider that he was committing a forgery for illustration if he were to sign some man's name to that thing there that is for publication. I mean exactly what I say, I have no recollection of ever seeing that form. I don't think I ever did. I don't think, ever I saw a form of that kind.

Q. Are you acquainted with National Banks, you were connected with this one for a number of years were you not?

A. Yes sir.

Q. And you were a director?

A. Yes sir.

1160 Q. You knew the Comptroller required reports?

A. Yes sir.

Q. You knew these reports were published.

A. Well sir, you may smile at my ignorance, but I never knew until you read that, that the Comptroller required them to be published. I knew that the banks published them but I thought it was for their own convenience.

Q. You thought it was just for the purpose of advertising?

A. I don't think I ever thought anything about it.

Q. You never knew before that the Comptroller required these to be published?

A. No sir.

Q. You thought it was just an act of the bank itself?

A. It would be a natural thing to do.

Q. You see banks right along, every time a report is called for, publish their condition?

A. Yes sir.

Q. And you noticed these attested by the directors?

A. Yes sir.

Q. And signed by some officers of the bank.

A. Yes sir.

Q. And yet you thought all this time that it was an act of the bank itself.

A. I never thought anything about it, there has not been any reason why I should have given that any weighty thought, my banking experience is nothing at all. Now while I have been President of this little bank up here at Aurora ever since its organization if I went into that bank today and tried to tell from the books what the condition of the bank was, if my life depended upon it, I couldn't do it.

1161 Q. Notwithstanding, you are willing to sign your name to reports and let people believe them.

A. Let me tell you this Mr. Lawyer, I don't know how many banks there are in this town, but I will just wager you a new hat, I will just bet you that there are not three directors in this town, that can tell you anything about their banks.

Q. You want to say that with regard to any directors do you?

A. Any that has not been educated, except the men in the banks whose business it is to know. Directors do not know these things as a rule, if you require a director to be an expert bookkeeper you couldn't get enough men in this country to serve as bank directors.

Q. You could tell if a column of figures were footed up right.

A. I might laboriously go through a column of figures.

Q. I suppose you could tell if a knife had been used on a book to scratch out figures?

A. Of course, I am not trying to protect myself from anything that legitimately belongs to be to bear, but I am simply trying to tell you things that you already know Mr. Thomas.

Q. I believe you said that you didn't know that the bank ever carried any paper of C. W. Mosher's.

A. It never came to my attention at all that Mosher had any paper in the bank, I never had any means of knowing it, and I have no recollection of hearing anybody say that he had.

Q. And you didn't know that they carried any paper of Outcalt's?

A. No I never.

Q. You didn't know that they carried any paper of the Western Manufacturing Company No. 1 of which Mr. Hurlbert was Manager?

1162 A. Well no, and if I understand that thing, I question if anybody could have told, I understand all those notes were carried by numbers there instead of in the name of anybody.

Q. You claim that you didn't know that there was such paper in the bank?

A. I did not know it, no sir.

Q. You claim you did not know anything about this Relief fund certificate of deposit?

A. All I know of that Relief fund is that the Legislature passed a law appropriating that much money and that Mosher was treasurer of that association, that is all I know.

Q. And you never inspected the books of the Capital National bank yourself?

A. No sir.

Q. Never looked at them for a moment in your life?

A. I don't think I ever looked at them at all, I know I never did.

Q. Never examined any of the accounts in there?

A. No.

Q. Did you have any of the bookkeepers examine them?

A. No.

Q. You have had a number of bookkeepers in your employ in the enterprises in which you have been interested?

A. Yes but I never used them to examine books of other concerns.

Q. Then you don't know how accounts were carried on the books of the bank.

A. No.

Q. And if there was an account on the books known as "C. W. Mosher, Tr." how do you know what it was?

A. Mosher was treasurer of the insurance company.

1163 Q. You don't know but what he may have carried some such a fictitious account?

A. No, I do not know.

Q. You don't know, you never examined the books.

A. No.

Q. And you don't know but that such an account may have been carried on the books that the insurance company had nothing to do with.

A. I wouldn't be surprised at anything that Mosher may have done.

Q. And you say that all the checks that were written on that fund, that account of the insurance company, were written by yourself?

A. That will take a little explanation. The insurance company's

account was absolutely under my control, but the Secretary in the office had authority to sign checks. The company's account was absolutely under my control, but the Secretary in the office there had authority to sign checks.

Q. But you didn't sign checks?

A. I did when there was occasion for it, but not as a rule. I had the right to do it, if I wanted to, but I delegated that right to this other man, he was always in the office.

Q. And you delegated your right to an investigation of the assets of the bank to this committee, I believe you said.

A. That is just what I did.

Q. And paid no further attention to it.

A. I couldn't if I tried to.

Q. Well you didn't.

A. I did not, no sir.

Q. Was Dr. Hamer on that committee at one time?

A. Dr. Hamer succeeded Mr. Holmes a short time before
1164 his death.

Q. Did you know that the bank at that time was carrying a large amount of overdrafts?

A. No, that never came to my attention in any way except at one of the directors' meetings. I remember the question of some overdrafts the bank had came up there, and Mosher was told to see that it was reduced.

Q. Your bank at Aurora has overdrafts?

A. No bank in existence is without overdrafts.

Q. I say your bank at Aurora has overdrafts?

A. Yes sir.

Q. The books show them?

A. I suppose so.

Q. You don't know?

A. I don't know, but I know the stat-ments they send to me has overdrafts.

Q. And do you publish them as overdrafts, or do you class them as Bills Receivable?

Q. The Capital National Bank has overdrafts, you say?

A. It never came to my attention but once, the overdraft account.

Q. Well the stat-ments never showed it did they?

A. I don't remember.

Q. You don't know that they ever did.

A. Now you might very honestly do that thing in two ways, it might be regarded as a loan, even if it was an overdraft.

1165 Q. You know the law requires them to be stated as overdrafts and not as a loan.

A. I do not know that the law requires that they shall be so published.

Q. And did the Capital National Bank have any rediscounts?

A. The conditions are just these, I have never been educated in a way that I could know anything of bookkeeping, we had an executive committee there on whom we all depended, that execu-

tive committee was made up,—those men were the best men of that town and men who had made the most money in that town, and we had a right to depend upon them.

Q. You say the bank sent that money out to Ed. Mosher and took his note for it, about the York county loans?

A. When the question came up as to permitting that thing to go on.

Q. I am asking you the manner in which it was done, did the bank send the money to Mosher to loan?

A. Yes.

Q. And took his note for it.

A. Took his note, but that note was,——

Q. Was Stark & Mosher running business for the bank at York?

A. Stark & Mosher ran a business for themselves previous to the time that Mosher was loaning money there for the Capital National Bank.

1166 Q. They money was sent to Stark & Mosher or both of them or either of them to loan for the bank?

A. It was sent to Mosher I think.

Q. It may have been to both?

A. I think not.

Q. You are positive that they did not?

A. I think not.

Q. And the notes of Mosher would be taken for the amount of money sent by the bank?

A. The Capital National Bank loaned through Mosher to the people who borrowed the money, but in order to comply with the requirements of the directors there, after it was found out that that was being done, Mosher's notes were sent for these various loans and that note would come in and be endorsed by C. W. Mosher and simply held there, it wasn't an obligation of E. W. Mosher except that it showed in a clean clear way that this much money was loaned and Mosher's note stood for it while the loans were being made up there, and at intervals the paper for the loan would come in, and then as they were paid off these notes were cancelled say when five thousand dollars was paid off in these farmers' loans up there, that five thousand dollar note of Mosher's would be taken up.

Q. And what would become of E. W. Mosher's notes when those were taken up?

A. They would be returned to him, I suppose.

Q. Well do you know that?

A. I do not know it, what become of the old note.

Q. I am asking you if you know what become of the note of E. W. Mosher when those other notes made by the parties who ultimately borrowed the money, were sent to the Capital National Bank.

1167 A. The notes of Mosher would not be altered by the notes that would be sent in of the men to whom the loans were made directly until the loans were paid because the notes of E. W.

Mosher there were sufficient to cover the full amount of money that was sent up there for him to handle for the bank.

Q. Do you know how these notes were entered on the books?

A. No sir.

Q. You don't know but what they were entered as Bills Receivable?

A. I presume they would be.

Q. And when the notes of those parties to whom E. W. Mosher loaned the money came in, would those notes be entered in the books of the bank as Bills Receivable?

A. I think not.

Q. Well do you know?

A. No.

Q. For all you know they may have been entered up as Bills Receivable.

A. I know this, that the other was the understanding of the way in which that business should be handled.

Q. Is that all you know about it?

A. Yes sir.

Q. You made no inquiry to see whether it was being done that way or not?

A. No the executive committee was looking after that.

Q. All the members of the executive committee that is those who were on the committee while the bank was in existence, are now dead?

A. Yes they are all dead.

Q. And the discount committee the same?

A. They are all dead.

1168 (By JUROR:)

Q. There is one thing in regard to those notes, when they were first given, of E. W. Mosher's signed by C. W. Mosher to secure the money that E. W. Mosher had got to invest for the Capital National bank, do I understand you to say, when that money or the collateral for that money was returned, that those notes were void?

A. For illustration, say five thousand dollars was sent to you by Mr. Jones here to loan for him, I don't know where you live, I don't know your name, with the understanding,—now of course when that money first comes to you, it has got to be loaned, unless previous arrangements are made for the loaning of it. Supposing five thousand dollars is sent to you to loan. I think I can make you see what I mean. Now when that money comes to you your are serving as an agent of Mr. Jones and you loan that money, you loan one thousand here and one thousand there and five thousand some other place. As you take these notes, well first when the five thousand dollars is received you send him your note of five thousand dollars.

(By JUROR:)

Q. He would have my note and have it secured.

A. He would have your note and have it secured. In this way

that note is given simply as the agent of Mr. Jones, you didn't borrow the money yourself, but it is sent to use for him, his agent. Now when you take these smaller loans, you send those in to Mr. Jones and he holds them there simply as his loan, that is what his money is loaned on, but in order that he may not have so many little loans and to comply with the instructions of his directors, he carries your note as an asset of the bank on which this money is loaned instead of entering up all those little notes that are the real loans. There is nothing wrong in that.

1169 (By JUROR:)

Q. Do you know that they didn't carry those mortgages as assets of the bank, do you know that they didn't? This is the way I have it, supposing they had those notes of E. W. Mosher's with C. W. Mosher supposed to be one of the best men in the state, as security for that—if I understand you right it was real estate collateral that was sent back, was it?

A. It was loaned on various things. I don't think it was all real estate.

(By JUROR:)

Q. Supposed to be first class collateral.

A. Yes, and sent back to the bank and held there until enough should be collected on any of this paper that money had been loaned on to make the amount of one of E. W. Mosher's notes. And I suppose his note was cancelled.

(JUROR:)

Q. Do you know that to be the case?

A. No but I know that was the instructions, and the only way that the directors consented to that thing continuing up there.

(By JUROR:)

Q. You see if they didn't cancel and send it to Mosher that would stop the hole both ways, both coming and going and leave Mosher out. The fact of the business is they had two loans instead of one to start with,—the reports never showed that those notes were cancelled did it?

A. This executive committee was a part of the directory and the directors instructed how that thing might be done, and it must have been done as they directed it should be done otherwise this executive committee would have stopped it, so it must have been done in that way, but personally I couldn't say, that is from personal knowledge, from my own individual knowledge as to just what was done.

1170 Q. Now I will ask you, you were speaking about this Donnell, Lawson *A* Simpson account, you say you had talked to Mosher and Outcalt at the time you went into the Capital National Bank about it?

A. No I did not say that.

Q. What did you say?

A. I said that the time the bank was changed that thing came up.

I did not mean myself as an individual, it was a subject of discussion at the first regular meeting there at first, at the organization.

Q. You had a talk with them, didn't you, you took part in the conversation?

A. Yes but what I mean it wasn't individual talk of mine with them at any time except at that regular meeting.

Q. You say they told you they would take care of that?

A. Yes, they said this "that is not an account that belongs in here and we have an arrangement with Donnel Lawson & Simpson and Outcalt and I will take care of that account" and they afterwards did they took it out of there and took care of it.

Q. How did they take it out?

A. I don't remember.

Q. When?

A. It was evidently done about that time.

Q. About the time you talked about it?

A. I suppose it was.

Q. Do you know anything about it?

A. Well I know this, that Mosher and Outcalt were given by Donnell, Lawson & Simpson a lot of bonds in Kansas City Water works bonds and a lot of land for their indebtedness to the Marsh bank, and Mosher and Outcalt were the owners of that property and the bank had nothing to do with it at all. Mosher and Outcalt
1171 made the statement there at the time of the organization of the bank, but that wasn't anything that belonged in the Capital National Bank and they would care for it, but when it was cared for, I couldn't tell.

Q. And did you ever examine the books to see if that was cared for?

A. No.

Q. Do you know that Mosher and Outcalt ever paid a cent into the bank on account of that loss?

A. I think if they hadn't done it the executive committee,—— .

Q. I am asking you as to the fact, if you have any knowledge as to whether Mosher and Outcalt paid anything into the bank on account of that loss.

A. I never saw them pay anything.

Q. And you never investigated the books.

A. I never investigated the books.

Q. Were you there when the Kansas City bonds were turned over to them?

A. No the bonds would not come to them in the bank.

Q. It didn't have anything to do with the bank?

A. Not at all.

Q. The bank didn't get anything.

A. Not at all.

Q. Get any of the land?

A. Not that I know of.

Q. About all you know about it then is that Mosher and Outcalt told you.

A. I told you in my direct testimony that that question came up

there at the organization of that bank, in checking over the stuff, I didn't do the checking but it was done there by the men that were there in the meeting at that time, of the stuff that came into the bank. That was some of the stuff that the old bank had.

1172 Q. Was it in the form of notes?

A. I think it was in the form of notes, I don't remember as to that.

Q. Well it would have to be in order to be checked over.

A. I don't know what it was, it must have been nothing at all except an account.

Q. It was either an account kept on the books at that time, or notes of those parties.

A. It evidently was either notes or an account kept by the Marsh Bank, and at the time of the transfer to the Capital National Bank was a subject of the scrutiny of the men that were doing that, and Mosher and Outcalt. And at that time, Mosher was the spokesman, I remember that very well he said this is something that don't belong here that bank has failed.

Q. That was immediately upon the organization of the Capital National Bank that is when it became in name the Capital National Bank.

A. That was just about the time that bank had failed, Donnell, Lawson & Simpson had failed just a few days before, so there was nothing irregular in having that thing provided for in the organization.

Q. And you think the conversation came up at that time, you were looking over the accounts to know the condition of things, and this matter came up, of Donnell, Lawson & Simpson and they told you that that ought not to be in the bank and that they would take care of that?

A. Yes sir.

1173 Q. So far as you have testified, do you know what you have testified to as being correct?

A. Yes sir.

Q. Do you know that it is true?

A. I know what I have testified to as having been said is true. I couldn't say as to what the books may show relative to that because I never inspected them.

Q. And as I asked you a while ago, from personal knowledge you don't know what Mosher and Outcalt did do with that account as it stood upon the books of the bank.

A. No, but certainly the fellows that were handling those accounts there Mr. Holmes and Mr. Stuart ought to have found it.

Q. You are reasoning that, and not testifying from personal knowledge.

A. I couldn't testify as to anything on the books, as to my personal knowledge.

Q. Can you testify as to any of their acts?

A. I can testify to that the same as I could if you said you would go down to the Windsor Hotel and be back in ten minutes, but I wouldn't know where you did go.

Q. I may have gone to "The Irrigator."
A. Yes sir.
Q. And you would be willing to testify that I had gone to the Windsor.
A. I would be willing to testify that you said you were going to the Windsor.
Q. And you say you were diligent in attending Directors' meetings?
A. When I was there I don't think I missed any of them.
Q. And helped declare the dividends right along.
A. I guess I did my part. The stat-ments always showed
1174 what was earned and what there was net.
Q. And you took the stat-ments for it?
A. I took their stat-ments for it, yes.
Q. You haven't offered any of those stat-ments in evidence.
A. I haven't any idea they were ever kept, because they are things that a person would hardly keep.
Q. I believe you said you became Vice-President of the American Exchange Bank.
A. Yes sir.
Q. And President of the Aurora Bank?
A. Yes sir.
Q. You were Superintendent of the B. & M. for a number of years?
A. Yes sir.
Q. Something like eleven hundred miles of it?
A. Yes sir, I built the most of it.
Q. And you are President and organizer of the Farmers' Insurance Company?
A. I was Vice President of it. I was President commencing with 1888, but I had no active part in the management of the company until 1890. I was Vice President from 1885 to 1888 and President from 1888 until it was sold out a couple of years ago but I had no active part in the management of it until 1890.
Q. You were saying something about a loan called the Small loan, had the bank loaned money to Mr. Small you say and taken his note for it?
A. Yes, I think he was doing a regular business, his little bank there, and the Capital National Bank had loaned him quite a large amount of money and when he failed why, he secured them in the way I spoke of.
1175 Q. He gave the Capital National Bank, a mortgage or deed to some lands?
A. I think he gave them deeds to a lot of lands that had mortgages on.
Q. And also a Bill of Sale to personal property?
A. Yes, some horses.
Q. And the land that he deeded had prior mortgages on?
A. Yes sir.
Q. The Capital National Bank assumed and paid those?
A. The Capital National Bank paid those, and expected to own

the land and to cancel the debt, that is the land, and what they got out of the horses, and they paid the mortgages on this land, and somebody took the thing into court and the court decreed that their deeds could only be considered as mortgages and ordered the land sold, and if there was anything left after paying the mortgages it should go to Small.

Q. Was there any equity left?

A. I think not.

Q. You say the bank didn't lose anything on that transaction?

A. I said, I thought it lost very little if anything, it may have lost a thousand or so dollars, I am not quite sure about that, but I remember the thing was considered safe.

Q. You say you were in Indiana when the Capital National Bank failed?

A. I was in Terra Haute. Stull and I were over there trying to buy the Terra Haute Gas company, I know I got a telegram there.

Q. And you say you were astonished that the bank had failed?

1176 A. Considerably so, yes sir.

Q. Never had any intimation or suspicion of it?

A. No, I did not.

Q. Always thought the bank was solvent?

A. I had $28,000.00 in there that I would have gotten out in some way, if I had thought it wasn't.

Q. You thought the bank was solvent?

A. Yes sir.

Q. You thought it was doing a flourishing business?

A. I had no reason for thinking it was doing a losing business.

Q. Why did you sell your stock?

A. On account of personal trouble with Mosher.

Q. But you never questioned Mosher or Outcalt's honor?

A. No sir.

Q. Their notes would have been good for quite a considerable amount?

A. When the bank closed, the bankers told me, after I got back to Lincoln, that they wanted to let them have money to keep the bank open and Mosher wouldn't do it.

Q. I suppose their notes for $150,000.00 either of them, would have been considered good?

A. I would think so.

Q. Without security?

A. I would think so.

Q. You sold some of your stock to Mr. Mosher didn't you?

A. Sold it to Mosher in 1891 some of it to Mosher and Outcalt together.

Q. Did you take any security for it at that time?

A. I did, but I offered to let them have it without security and Mosher says No I will give you security, & he said "I would

1177 rather give you security for it."

Q. What did they give you as security?

A. Gas company stock.

Q. Notwithstanding they were reported to be millionaires you were willing to take security.

A. I would take that from even you.

Q. You say Mr. Mosher insisted upon giving security?

A. I didn't put it that way. I will tell you the transaction if you want to know it.

Q. Did he volunteer to give you the security?

A. He did. I offered to take his and Outcalt's note without any security for my stock for $22,500.00.

Q. Didn't that excite your suspicion, that he wanted to give security, when a man that is worth a million wanted to give security for that amount?

A. I wouldn't think so. I am not a millionaire, but I never borrowed a dollar without giving security, I want them to take it because I want them to take something that is good.

Q. And that didn't excite your suspicion?

A. Not at all.

Q. And that is all the security you took?

A. I took 350 shares of Gas stock, $35,000.00 face value, it was worth about 60¢ at that time.

Q. Did you sell any stock to Mr. Outcalt?

A. Yes some issued to Mosher and Outcalt. The transaction was done through Mosher but Mosher and Outcalt both signed the note.

Q. Did you take a mortgage from Mr. Mosher on or about the 27th day of December 1892?

1178 A. Yes I did. I will tell you about that if you want me to.

Q. And did that include two onyx top gilt tables, one mahogany table, 1 mahogany cabinet, 1 blue satin corner chair, 1 gold colored reception chair, 1 oval back red and gold easy chair, 1 large upholstered velvet trim-ed lounge, and other things of that character?

A. Now I will tell you about that. That was while I was in Terre Haute Indiana, and while I was there it became evident that that bank was going to fail, and they took this chattel mortgage over and gave it to Mr. Mullen, my secretary, and I never knew anything about it until I came back, when Mr. Mullen gave me those papers, and I said to him, "you take those papers back to them and tell them I am not in the chattel mortgage business."

Q. Mosher voluntarily gave you the chattel mortgage?

A. That is just exactly what he did.

Q. And you didn't know anything about it.

A. I didn't know anything about it. I never exercised it, did I?

Q. Was it filed in the County Clerk's office?

A. I think it was filed before I came home.

Q. When did you leave for Terre Haute, Indiana?

A. It was probably Tuesday or Wednesday before the failure of the bank. It may have been a day or two longer than that. Stull and I went over to look over the Gas company there, I had a letter of credit in my pocket from John W. Walsh, President of the —— bank for sufficient money to buy both the Terra Haute gas plants if I could get them, and Stull and I went there to see if I could get them, that was our mission in Terra Haute.

1179 Q. Mr. Outcalt also gave you a mortgage dated December 24th, 1892 on a lot of personal property, including some horses, and timothy hay and oats and harness, and horse boots, and sulkies and a lot of other stuff on a farm about five miles south of Lincoln.

A. Yes sir, that was the same time when I was away and given to Mr. Mullen.

Q. And at the same time was there a lot of real estate deeded to you by Mr. Mosher?

A. Yes sir, I will have to tell you about that to-, whether you want to hear it or not. Now I held up until a couple of months or such a matter before the failure of this bank, this gas stock as collateral to my note. Mosher came over to my office one day and he says, "Would you just as soon have real estate security as collateral instead of gas stock" and I said "al- right" Mosher then gave me a lot of real estate security. When I sold that stock to Mosher I wanted him to understand and I felt it that he was welcome to that stock under the circumstances without collateral, but he said "I would just as soon give you collateral" and I took it. When this real estate was given to me it was given in exchange for that gas stock. I had no idea that he was preparing for trouble, but that is just what he was doing, what he wanted to do was to get something in his possession that he could handle.

Q. Were you here when the real estate conveyances were made to you?

A. Yes sir, but I did not think that ever there was any reason for going into that thing.

Q. As a matter of fact didn't Mosher deed to you the North west quarter of 24—9—6 Lancaster County, and did you recite the consideration as $10,000.00?

A. You mean Outcalt.

1180 Q. Yes.

A. Yes.

Q. And this deed was recorded January 23rd, 1893?

A. I presume very likely, because as I told you these things were given me as security in lieu of this gas stock that I surrendered.

Q. When that deed was recorded was you here?

A. Yes those things were in the possession of Mr. Mullen and they were not recorded, but when that thing came up, he sent them to the Court House, to be recorded.

Q. Did you instruct Mr. Mullen before you left?

A. No, I did not.

Q. He acted as your agent in recording those deeds?

A. Yes sir.

Q. And with your consent, he was attending to your business during your absence?

A. Not with my consent, but if I had been there, I should have done just as he did, but he knew I wasn't there and he wanted to have them recorded. That thing has all been gone over in court.

Q. And wasn't there a deed made to you conveying the North east quarter of 12—12—5 in Hamilton County?

A. Yes, that was all one transaction.

Q. And one for the South west quarter of 31—10—1 in York county?

A. Yes sir.

Q. The first deed recited $10,000.00 the next one $4,000.00 and the last one $4,800.00, is that correct?

A. I couldn't tell you as to that now. You know.

1181 Q. And another one re-conveying the title to the S. W. 31—10—1 York county?

A. I couldn't say the numbers you are reciting was right or wrong, but the whole transaction was as I have told you.

Q. How many pieces of land were included in that transaction?

A. I couldn't tell you.

Q. About how many?

A. You see that stuff all had mortgages on, my right in there was a right that I could only get by taking care of the property, and I don't think there was a single piece that didn't have a mortgage on except that piece in Lincoln.

Q. About how many acres were there?

A. Oh, I couldn't tell you about that, there might have been five or six pieces of land, I don't know.

Q. And there might have been ten or twelve?

A. There might have been I couldn't tell how many there were.

Q. You say when this deed from Outcalt was made December 29th, 1892 you were in Lincoln?

A. No, I did not.

Q. Didn't you just testify to that a moment ago, that when the deed from Outcalt was made to you that you were in Lincoln?

A. I don't think so.

Q. Well what are the facts?

A. I said that was given me, that this stuff up here was given me a couple of months or such a matter before the failure of the bank, in exchange for this gas stock.

Q. Isn't that deed dated, the deed to the N. W. 24—9—6 isn't it dated December 27th, 1892?

A. Yes it was and I will tell you why. When Mullen came to have that recorded he found that there was no date on it at all and I remember now of his telling me that he put a date on that.

Now the date,—I don't know what date he put on but there 1182 was a date filled in because there was a date belonged there.

The very fact that I exchanged that gas stock for land is pretty good evidence that I did not press those fellows, I would have given them the gas stock if they had come and asked me for it, but they gave me this stuff in lieu of it, but it afterwards developed that I was taking a lot on my hands.

Q. Well did you record any of those deeds until after the failure of the bank?

A. No I think Mullen recorded them all, sent them for record while I was away.

Q. While you were gone?

A. Yes sir.

Q. After the bank failed.

A. No I think this is what Mullen told me, when I came home that Mosher had come over and told him that those deeds that I held ought to be recorded and I think he sent them up for record before the bank failed, on Mosher's telling him that they ought to be recorded.

Q. Isn't *if* a fact that the Outcalt deed, the one just referred to was recorded on January 23rd?

A. I couldn't tell about that.

Q. Isn't it a fact that the deed to some Hamilton county land, was recorded January 18th, 1893?

A. That might have been.

Q. And wasn't there a deed to the S. W. 31—10—1 in York county to you executed by Mosher filed for record January 14th, 1893?

A. I don't hardly see how that could have been, and yet I would not say it wasn't.

1183 Q. You were here on or about the 14th of January 1893?

A. That would be nine days before,—I don't know that I wasn't.

Q. On that day didn't you make a deed to Mosher to the S. W. 31—10—1 in York County?

A. Yes, and I will tell you how that was done. When they gave me these first deeds, they afterwards came and wanted to exchange some other pieces for those, and that is the way that those exchanges were made. I deeded two or three pieces of land to them; that they had given me to take in lieu *to* the other land that they had deeded to me.

Q. And on or about the 28th day of December didn't Mosher and his wife, and Outcalt and his wife convey to you by deed the S. E. quarter and the south half of the north east quarter of 19—11—2 also the south west quarter of 13—12—2—all in York county, which deed was recorded December 28th, 1892?

A. Very likely that is right.

Q. And the consideration recited in there was $16,000.00?

A. Very likely that is right, because those deeds were given me in lieu of this gas stock and afterwards there were changes made and when I held that stuff as security, it was a question of whether I was willing to let the security go that they had given me, and take other security in place of it.

Q. On January 12th, 1893 you deeded to Mosher the south west quarter of 13—12—2 in York county for a consideration of one dollar.

A. Very likely, it was a transfer of securities.

Q. And on January 7th, 1893 Mosher and wife and Outcalt and wife, by deed conveyed to you the west half of the South east quarter of 20—10—2 in York county for a recited consideration of $1,000.00 which was recorded January 14th, 1893.

1184 A. Very likely, it was all the same transaction.

Q. And on January 18th, 1893 Mosher and wife by deed, conveyed to you the North west quarter of 19—21—1 York county for $4,000.00 consideration.

A. Very likely, it was all the same transaction. And I want you to understand what that was, that stuff was all security, there was none of that stuff mine, except it was a changing of security.

Q. I hand you exhibit No. 1059 and will ask you to look at that and see if that is a correct copy of a Bill of Sale which Mr. Outcalt gave to you.

A. I would say that it looks like some I found there when I got home.

Q. And exhibit No. 1060 is a chattel mortgage executed by Mr. Mosher?

A. I presume it is, I never kept this thing at all, I gave *to* to Mr. Mullen and told him to take it back, that I wasn't in the chattel mortgage business.

1185 Q. You testified that there was a date in one of those deeds that Mr. Mullen filled in.

A. There was a blank date.

Q. I will ask you if it wasn't in the chattel mortgage, or the Bills of Sale.

A. I couldn't tell about that, and I wouldn't pretend to say, which one it was in, but I know he told me there was a blank in one.

Q. Was it in the Chattel mortgage or the Bill of Sale, is that your recollection, or was it?

A. I wouldn't have any recollection as to which one he told me it was on, but I remember of him telling me that and asking me if he should fill in the date, and I told him I didn't see anything wrong in it.

Q. He testified didn't he in the case you had in court, that he entered it in the Clerk's office the morning that he filed it, or at the office?

A. I don't remember what he testified to.

Q. Wasn't you there, in an action with reference to this same property?

A. Where was it?

Q. Why it was an action, I think it was an action in which Mr. Whedon was defendant, one of the defendants and pending in the Supreme Court now.

A. If I knew what one it was he filled the date in, I would tell you.

Q. And do you say Mr. Mullen filed this Chattel mortgage and Bill of Sale that I have just referred to, during your absence?

A. Yes sir.

Mr. THOMAS: That is all.

1186 Redirect examination.

By Mr. ROSE:

Q. What date was it Mr. Thompson, that Mr. Mosher pledged to you this $35,000 of Gas stock?

A. It was November 14th, I think 1891. It was in November, and I think the 14th of November was the date of the note. It was a large note.

Q. And these chattel mortgages exhibit- No. 1059 and 1060 executed one of them by Outcalt and one by Mosher, you say were executed and left at your office without your knowledge at all?

Q. What is the fact about it?

A. They were both left in my office during my absence, and without my knowledge, and very much to my displeasure when I came home.

Q. What did you do with the mortgages in the way of taking possession or claiming any rights under it?

A. The mortgage for the horses was a mortgage on the personal property that was on a farm that they had given to me in lieu of this gas stock and that I took possession of and handled. I sold those horses to Judge Hayward, late Senator Hayward and C. E. Cotton, those two men bought those horses, the other stuff named in the mortgage, I don't know anything about it, that was sent back to Mr. Mosher with thanks, I didn't want anything to do with it.

Q. And never did have anything to do with it.

A. No.

1187 Q. And you say that when this farm was turned over to you this stuff was all on the farm?

A. Yes sir, all on the farm.

Q. And somebody had to take care of it.

Q. And when you made this deal way back in 1891 you say you were willing to take just simply their notes.

A. I did, and was very willing to take it.

Q. You thought they were entitled to credit for that much, up to the time of the failure, and more?

A. I was perfectly satisfied to take their note for $22,500 I did not question their ability to pay it, or their intention to pay it.

(By Mr. THOMAS:)

Q. You say you had a personal difficulty with Mr. Mosher?

A. Yes sir.

Q. About when?

A. That was the day that I sold him my stock, the very day that I sold it to him.

Q. And your relations were never amicable after that?

A. Well we spoke as we passed each other.

Q. You spoke as you passed by and that was about all.

A. Yes sir, that was about all.

By Mr. ROSE:

Q. Did you have any stock left after that transaction?

A. I had, $1,000.00.

Q. Did you have that on the failure of the *failure?*

A. Yes sir, I did.

1188–1198 Q. Did you pay the assessment on it?

A. Yes sir, I did.

Q. How much?
A. $1,000.00.

Mr. ROSE: That is all.
Mr. THOMAS: That is all.
Witness excused.

1199 Ex. 1059. O. P. H.

Bill of Sale.

51908.

Bill of Sale.

R. C. Outcalt to D. E. Thompson.

Filed Jan'y 23rd, 1893, at 8:30 A. M. J. D. Woods, County Clerk.

Know all men by these presents: that I R. C. Outcalt, of Lincoln, Nebraska, for and in consideration of the sum of $12,500 to me in hand paid by D. E. Thompson, do hereby sell, assign, transfer, and set over unto said D. E. Thompson the following described personal property, to-wit: One Stallion, called "Industry, bay color, small scrip in face, white hind ankles, foaled May 18–1886; One bay colt, small star, both hind feet white, foaled March 14, 1890, called "Burlock."

One dark bay mare, without marks, foaled May 1877, called "Edna."

One chestnut mare, foaled in 1877 called "Lena Carey."

One bay mare, star, two hind feet white, foaled April 1882, called "Bettie Medium."

One bay filly, one hind foot white, foaled 1887 "Alice McMahan."

One bay mare, hind feet white, foaled 1886 "Tremont Queen."

One bay filly, little white on hind foot, foaled 1887 "Merian."

One bay filly, blaze face, hind legs white, foaled 1887, "Lady Burnham."

Bay mare foaled 1882 "Dolly McGregor."

Chestnut filly, foaled 1887 blaze face, "Girly King."

Bay filly foaled 1888 "Jennie McAsham."

Chestnut filly, not named, foaled October 1889.

Bay filly, foaled July 1889, called "Gracie."

Bay filly, One hind foot white, foaled 1889 called the "Dutchum."

Bay filly, no name, no white, foaled June 9–1890 called the Drusefilly.

Bay filly, foaled May 17-1890.

Bay sucking filly.

1200 Chestnut filly, called "May Stoddard."

Chestnut yearling filly, called Kate Leonard.

Chestnut filly, foaled June 30/91, called Mary Beeber.

One bay filly, foaled June 7/91 called Emma De Forrest.

One dark bay filly, foaled Apl. 12/92 called Georgie Moore.
One bay filly called Brownie Bess, foaled Mch. 22/92.
One bay filly foaled Apl. 14/92 called Nashville Queen.
One bay filly, foaled Apl. 3rd 1892 called Louisa Burnham.
One bay colt, foaled June 22/92 not named.
One brown mare, 12 years old, called Jennie Lynn.
Five carts. (Road.)
One light wagon.
One hundred tons timothy hay, baled and unbaled.
Two thousand (2000) bushels oats.
All harness, horse boots, two sulkies.
Black filly, 2 years old.

All of the foregoing personal property being on the farm of the undersigned, about 5 miles south of the city of Lincoln, known as Grassland stock farm. To have and to hold the said property unto the said party of the second part, his heirs and assigns forever.

And I do hereby convenant to warrant and defend said property against the lawful claims of all persons whomsoever.

Witness my hand this 24 day of Dec. 1892.

RICHARD C. OUTCALT.

Ex. 1059. P. 2.

STATE OF NEBRASKA, *Lancaster County, ss:*

I, A. M. Truieble County Clerk of said County hereby certify that the above and foregoing is a true and correct copy of the or-ginal now on record in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said County this 27th day of February A. D. 1899.

A. M. TRUIEBLE,
County Clerk.
WELLS, *Deputy.*

1201 Ex. 1060. O. P. H.

51904.

Chattel Mortgage.

L. P. Mosher and C. W. Mosher to D. E. Thompson.

Filed Jan'y 23, 1893, at 8:30 A. M. J. D. Woods, County Clerk.

Know all men by these presents; that we L. P. Mosher and C. W. Mosher, of Lincoln Nebraska, for and in consideration of $2,500.00 to us in hand paid, by D. E. Thompson of Lincoln, Nebr. the receipt whereof is hereby acknowledged have bargained sold and conveyed to said D. E. Thompson, his heirs and assigns the following mentioned goods, chattels and personal property to-wit: at present situated in the reception room in the dwelling house now occupied

by the undersigned, at the corner of Fifteenth and K streets, in the city of Lincoln, Neb. this property, viz.

2 Onyx top gilt tables. 1 mahogony table, 1 mahogony cabinet. 1 blue satin corner chair, 1 gold colored reception chair. 1 oval back red and gold easy chair, 1 large upholstered velvet trimmed lounge, one large upholstered velevet trimmed chair. 1 blue platform rocker. 1 brass reception chair. 1 yellow seated tete-tete chair. 1 hat rack. 1 small mahogony table, 1 marble statue called "Cat & Birt," 2 marble statues called "Dancing Boy & Girl" 1 large blue rug. 3 small rugs.

The following now situated in the library in said house, viz: 1 wall clock, 1 Corduroy upholstered lounge, 1 Marble top center table. 1 Copper revolving chair, 1 large rug. 3 small rugs, 1 silver ebonized image of Columbus.

The following at present located in the sitting room in said house viz:

1 Corduroy cushion, for window seat, 5 down pillows, 1 "Karmick & Bach" piano and stool. 1 blue upholstered arm chair. 1 willow rocker. 1 red willow chair. 2 red leather bottom rockers. 1 upholstered platform rocker. 1 large yellow rug. 1 student lamp.

The following at present located in the dining room and kitchen in said house, viz:

Ex. 1060. P. 1.

1202 1 large oak dining room table. 8 oak dining room chairs. 1 large rug. 3 small rugs. 1 gas range and fixtures. 1 Coal range and fixtures. 1 large ice box or refrigerator. 1 small gas stove and fixtures. All cooking and kitchen utensils, crockery, and table ware, chinaware all silver and plated ware all table linen, 1 large mirror over mantel.

Also the following at present located in south bed room, in said house, viz:

1 large blue rug. 2 small rugs. 1 large walnut bedstead with matresses, springs, bedding, pillows, sheets, blankets and covers of all kinds. 1 Walnut marble top dresser. 1 walnut top washstand. 1 set blue wash bowl and pitcher. 1 upholstered easy chair. 1 upholstered square chair. 1 onyx top, silver trimmed table. 1 statue "Three Graces, 1 red bottom chair, all combs, brushes handkerchief boxes in said ro-m.

Also at present located in west bed room, the following: viz:

1 large carpet rug, 2 small rugs, 1 brass bedstead with springs mattresses, covers and bedding. 1 large red upholstered platform rocker. 1 large red upholstered easy arm chair, 1 Red upholstered lounge. 1 large pier glass, 1 mahogony dresser, 1 upholstered rocker, 1 marble top table. 2 marble statues "Gladiators."

Also in the east bed room, in said house, the following, viz:

1 walnut bedstead with springs, matresses, covers and bedding, 1 walnut dresser. 1 cane bottom rocker. 1 blue and red upholstered corner cha-r. 1 small book case. Also the following chattels in said — viz: 1 blue hassack, all hall and stair carpets and rugs, iron bedstead with mattress and springs in girl's room and all bedding

therewith. Bedstead in man's room with
Ex. 1060. P. 3. springs mattress and bedding, all furniture in room occupied by hired man and furniture in room occupied by servants. 1 billiard table, with balls and cues, all curtains, window curtains and shades, portier-s and curtain
1203 fixtures, All gas and electric light fixtures. All mantel ornaments, clocks. 6 common chairs, 1 common rocker. All bath room furniture and appliances. The intention being to hereby sell and convey all the furniture and personal property in said house of every kind and description, save personal ornaments and clothing whether herein specifically enumerated or not, and excepting therefrom family pictures and personal presents; also the following other personal property now in the barn adjacent to said dwelling house: 1 phaeton, two seated; 1 light buggy, 1 pony cart, 1 small sleigh. 3 sets single harness; 2 sets double harness. All curry combs, brushes and horse furniture and belongings in said barn. 1 horse bay called "Doc"; 1 bay mare called "Cora." Said horses now being used by undersigned. 2 small ponies, called "Tom and Don. 2 Geldings now with W. H. Dorgan and bought of Church Howe at his auction held at fair grounds near Lincoln. 1 cow, 1 iron yard sette-. 1 iron yard chair. 2 iron porch chairs, 2 iron porch sette-s all yard ornaments. Lawn mowers, rakes, wheel barrows, yard and barn tools. To have and to hold said property unto said D. E. Thompson his heirs and assigns forever.

The conditions of this conveyance is that whereas heretofore the said D. E. Thompson, caused a certificate of stock of the Capital National Bank of the face value of $2000 being certificate No. 88 to be issued and delivered to said C. W. Mosher as Trustee for Lora A. Thompson said Mosher to hold said certificate and to pay the income thereof and dividends thereon to said
Ex. 1060, P. 3. Lora A. Thompson until she should arrive at the age of 18 years and then to deliver said certificate to said D. E. Thompson, his heirs or assigns. Now if the said Mosher shall pay to the said Lora A Thompson,
1204–1241 the dividends of said stock, which said Mosher guarantees shall equal $200 per year and when said Lora A. Thompson arrives at the age of 18 years, shall return said stock or its par value $2000 to said D. E. Thompson, and shall save and hold harmless the said Lora A. Thompson, from any loss whatever on account of said stock and shall pay to her said dividends or $200.00 per year until she arrives at the age of 18 years and shall then return said stock or its par value to said D. E. Thompson, then this instrument shall be void, otherwise in full force and effect. If the said D. E. Thompson shall at any time feel himself insecure or unsafe then he may take and sell said property either at public or private sale and from the proceeds thereof pay to said Lora A. Thompson the sum she would be entitled to, to be arrived at by multiplying the number of years that must elapse before she arrives at the age of 18 years, by $200 and pay said sum to her or to such other person as he may select for her and also to pay to himself the sum of $2,000.

In testimony whereof said parties have hereunto set their hands this 27 day of December 1892.
Signed in Duplicate.

LOUISE P. MOSHER.
C. W. MOSHER.

#51904.

STATE OF NEBRASKA, *Lancaster County, ss:*

I, A. M. Truieble County Clerk of said County, hereby certify that the above and for-going is a true and correct copy of the original now on record in this office.
In testimony whereof I have hereunto set my hand and affixed the seal of said County this 27th day of February A. D. 1899.

A. M. TRUIEBLE,
County Clerk.
WELLS, *Dep.*

[SEAL.]

Ex. 1060, P. 4.

1242 Mr. DEWEESE: I now offer in evidence the record of the proceeding in the United States Circuit court, being Exhibit "U" duly certified to by the Clerk of Lancaster County District Court, and the clerk of the United States Circuit Court, and the mandate of the Court of Appeals.
Mr. THOMAS: The plaintiffs object to that as incompetent, irrelevant and immaterial, not properly authenticated and no sufficient foundation laid.
Objection overruled.
The plaintiffs each separately except.
Def'ts Exhibit "U" received and read in evidence, as follows.

1243 THOMAS BAILEY
vs.
CHARLES W. MOSHER ET AL.

Copy of Motion and Ruling Thereon, Demurrer, Ruling Thereon and Mandate.

Be it remembered, that on the 18th day of January 1894 a Motion to Remand was filed in the Clerk's office of said Circuit Court, which said Motion is in words and figures following, to-wit:—

In the Circuit Court of the United States for the District of Nebraska.

THOMAS BAILEY
vs.
CHARLES W. MOSHER ET AL.

Motion to Remand.

Comes now the plaintiff in this action and moves the court here to remand said case back to the District Court of Lancaster County, Ne-

braska, for the reason that this Court has no jurisdiction of the parties or the subject matter as shown on the face of the record. There is no federal question involved in this action.

The validity of the statutes of the United States claimed by the said defendant are uncontroverted and not drawn in question in this action, nor is the validity or authority of the acts done by defendants or claimed to have been done by the plaintiffs in said petition against said defendants, disputed or denied by the defendants.

The allegations in the petition are broad enough in themselves to sustain a judgment without reference to any federal question or the validity of any federal statute.

Wherefore plaintiff prays said action may be remanded at the costs of the defendant.

L. C. BURR,
Att'y for Thomas Bailey.

ELMER D. FRANK, *Clerk.*

Endorsed: Filed Jan. 18, 1894.

Def'ts' ex. "U," P. 1.

1244 Thereupon afterwards towit: At the January 1894 term of said Court, and on the 7th day of February 1894, the following proceedings were had and done, as appear of record on Page 370, Journal "S" of said Court, to-wit:

165, "Q."

THOMAS BAILEY
vs.
CHARLES W. MOSHER ET AL.

Motion to Remand Overruled.

This cause having been heard on the motion of the plaintiff to remand the same to the District Court, within and for Lancaster County, Nebraska, from whence it came, and the Court being fully advised in the premises, doth now, on this day order and adjudge that said motion be and the same is hereby overruled. To which ruling and order of the court the plaintiff by his attorneys Pound & Burr, then and there duly excepted.

Def'ts Ex. "U," P. 2.

1245 Thereupon afterwards, to-wit: On the 8th day of February 1894 Demurrer of Outcalt and Mosher was filed in said case, which said Demurrer is in words and figures following, to-wit:

In the Circuit Court of the United States, District of Nebraska.

THOMAS BAILEY
vs.
CHARLES W. MOSHER ET AL.

Demurrer of C. W. Mosher and R. C. Outcalt.

Come now the defendants Richard C. Outcalt and Charles W. Mosher and each for himself separately demurs to the petition of the plaintiff for the following reasons:

1. The facts stated in the petition are not sufficient to constitute a cause of action in favor of the plaintiff and against either of these defendants.
2. Because there is a defect of parties plaintiff in this action.
3. The plaintiff has not legal capacity to sue or to maintain or prosecute this action.

Wherefore each of these defendants ask if they shall be required to farther answer said petition of the plaintiff.

RICHARD C. OUTCALT,
By CHAS. O. WHEDON,
His Attorney.
CHARLES W. MOSHER,
By CHAS. O. WHEDON,
His Attorney.

Endorsed: Filed Feb. 8, 1894. E. D. Frank, Clerk.

Def'ts' Ex. "U," P. 3.

1246 Thereupon afterwards, to-wit: At the January 1894 Term of said Court, and on the 9th day of February 1894, the following proceedings were had and done in said case, as appear of record on page 380 Journal "S" of said Court, to-wit:

165, "Q."

THOMAS BAILEY
v.
CHARLES W. MOSHER ET AL.

Demurrers Sustained and Suit Dismissed.

This cause coming on for hearing on the demurrers of the defendants to the petition of the plaintiff herein filed, was argued and submitted to the court by attorneys for the respective parties, Messrs. Pound & Burr, appearing for the plaintiff and C. O. Whedon and J. W. Deweese for the defendants.

Whereupon after due consideration thereof and being fully advised in the premises, it is now on this day

Ordered and adjudged by the Court that said demurrers be and

the same are hereby sustained, and this cause is dismissed out of this court at the costs of the plaintiff. To which ruling and order of the court said plaintiff, by his attorneys then and there duly excepted. Execution for costs ordered stayed until the further order of this court.

Def'ts' Ex. "U," P. 4.

1247 EXHIBIT "A."

Thereupon afterwards, towit: A Mandate from the Circuit Court of Appeals, was filed in said case, which said Mandate is in words and figures following, to-wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Circuit Court of the United States for the District Court of Nebraska, Greeting:

[SEAL.]

Whereas, lately in the Circuit Court of the United States for the District of Nebraska, before you, or some of you, in a cause between Thomas Bailey, plaintiff and Charles W. Mosher, Homer J. Walsh, Rolla O. Phillips, Charles E. Yates, Ellis P. Hamer, Ambrose P. S. Stuart and Richard C. Outcalt, defendants, wherein the judgment of the said Circuit Court in said case, entered on the 9th day of February A. D. 1894, is in the following words, viz:

"This cause coming on for hearing on the demurrers of the defendants to the petition of the plaintiff herein filed, was argued and submitted to the Court by the attorneys for the respective parties, Messrs. Pound & Burr, appearing for the plaintiff and C. O. Whedon, and J. W. Deweese for the defendants.

Whereupon after due consideration thereof and being fully advised in the premises, it is now on this day ordered and adjudged by the court that said demurrers be and the same are hereby sustained and this cause is dismissed out of this court at the costs of the plaintiff. To which ruling and order of the court said plaintiff by his attorneys then and there duly excepted. Execution for costs ordered stayed until the further order of this court."

as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the United States Circuit Court of Appeals, Eighth Circuit, by virtue of a writ of error agreeably to the act of Congress, in such case made and provided, fully and at large appears.

Def'ts' Ex. "U," P. 5.

1248 And whereas, in the present term of May in the year of our Lord one thousand eight hundred and ninety four the said cause came on to be heard before the said United States Circuit

Court of Appeals, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said Circuit Court in this cause, be and the same is hereby affirmed with costs; and that Charles W. Mosher, Homer P. Hamer, Rolla O. Phillips, Charles E. Yates, Ellis P. Hamer, Ambrose P. S. Stuart and Richard C. Outcalt recover against Thomas Bailey the sum of twenty dollars for their costs herein and have execution therefore.

SEPTEMBER 10, 1894.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the tenth day of November in the year of our Lord one thousand eight hundred and ninety four.

JOHN J. JORDAN,
Clerk of the United States Circuit
Court of Appeals, Eighth Circuit.

Costs of Defendants in Error.

Clerk	
Printing record	
Attorney	20.00
	$20.00

Paid by pl'ff in error.

Endorsed: Filed Nov. 10, 1894. Elmer D. Frank, Clerk.

Def'ts' Ex. "U," P. 6.

1249 UNITED STATES OF AMERICA, *District of Nebraska, ss:*

I, Geo. H. Thummel, Clerk of the Circuit Court of the United States, District of Nebraska, hereby certify, the foregoing to be a true and correct copy of Motion to Remand, Ruling of the Court thereof, Demurrer, Ruling of the Court thereon, and Judgment, in the case of Thomas Bailey *vs.* Charles W. Mosher *et al.* No. 165 Docket "Q" as the same appears on file and of record in my office.

I further certify that on February 13, 1894, petition for allowance of Writ of Error was filed in said case on behalf of plaintiff and on same date Writ of Error was issued by the Clerk hereof and allowed by the Court, for hearing of said case before the United States Circuit Court of Appeals. That afterwar on November 10th, 1894, Mandate from said U. S. Circuit Court f Appeals was entered for record in said case, a true and correct copy o which Mandate is attached hereto marked exhibit "A" and made a part of this transcript.

Witness my hand, and the seal of said Court at Omaha in said District, this 12th day of June, A. D. 1902.

[Seal U. S. Cir. Court, Dist. Neb.]

GEO. H. THUMMEL, *Clerk.*

Def'ts' Ex. "U," P. 7.

1250 *Transcript.*

THOMAS BAILEY
vs.
CHARLES W. MOSHER ET AL.

Petition.

In the District Court, Lancaster County, Nebraska.

THOMAS BAILEY, Plaintiff,
vs.
CHARLES W. MOSHER, HOMER J. WALSH, ROLLA O. PHILLIPS, CHARLES E. YATES, ELLIS P. HAMER, AMBROSE P. S. STUART, and RICHARD C. OUTCALT, Defendants.

Petition.

Comes now the plaintiff and for his cause of action herein against the said defendant and each one of them says, that at the special instance and request of the Capital National Bank of Lincoln, Nebraska, on the 11th day of October to the 28th day of December 1892 he loaned to the said Capital National Bank the sum of $11,500 and received from said bank as evidence of said indebtedness its six certain certificates of deposit due and correct copies of said certificates of deposit are hereto attached and made a part of this petition and each one of said certificates of deposit were and are payable on demand and bearing 6% interest from the several dates thereof and said sums of money was loaned and said certificates were issued and delivered to the defendants by said bank upon the following dates to-wit:

October	11,	1892,	one	certificate	for	.....	$500.00
"	"	"	"	"	"	.....	1000.00
"	"	"	"	"	"	.....	8000.00
December	28,	"	"	"	"	.....	500.00
"	"	"	"	"	"	.....	500.00
"	"	"	"	"	"	.....	1000.00

Def'ts' Ex. "U," P. 8.

1251 The plaintiff further says that said Capital National Bank during all the times of the transactions herein set forth doing business in the City of Lincoln, State of Nebraska, was duly organized and incorporated under and by virtue of the banking laws of the

United States and at the time of making said certificates and ever since the above named defendants were the directors and officers of said bank and as said directors and officers had entire and exclusive control and management of the business and affairs of said bank.

And this plaintiff further alleges that the above described certificates of deposit referred are made payable to the order of the plaintiff who has ever since their issue been and now is the owner thereof and the indebtedness represented thereby, and no part of said indebtedness has been paid and there is now due and owing on the same from the Capital National Bank and from each one of said defendants herein the said sum of $11,500.00 together with interest upon the same at the rate of six per cent. per annum from the date of said several certificates of deposit as above set forth.

On the 23rd day of January 1893 the said Capital National Bank closed its doors and ceased to do business and its banking house and assets and all of its property was taken possession of by the comptroller of currency of the United States and since said time one John D. McFarland appointed its receiver and in his place one Kent K. Hayden has been appointed its receiver by the said comptroller and said bank and all of its assets and property and money is now in the hands of and under the control of said Kent K. Hayden, receiver, he is endeavoring to wind up its affairs and said bank is wholly insolvent and unable to pay the indebtedness due to the plaintiff or any part thereof.

Def'ts' Ex. "U," P. 9.

1252 The said defendants and each of them on said 11th day of October 1892 and on the 28th day of December 1892, were and ever since have been directors and officers of said bank and were such officers and directors of said bank for many years prior thereto.

On December 9th, 1892, in compliance with the laws of the United States and upon an order and direction from the comptroller of the currency of the United States the said defendants and Richard C. Outcalt, acting as cashier and the said Charles W. Mosher, C. E. Yates, and R. O. Phillips acting as directors of said bank made what they represented to be a statement of the condition of said bank upon said day and caused the same to be published in the daily newspapers of general circulation of the city of Lincoln as well as the State of Nebraska and which statement is hereto attached and made a part hereof as exhibit "A."

Since and long prior to the making of said loans by the plaintiff the defendants as officers of the said Capital National Bank have regularly made statements as required by law to the comptroller of the currency and caused the same to be published in the newspapers of general circulation in the said city of Lincoln, and the said State of Nebraska, purporting to show the condition of said Bank upon the several dates of said statements. The last statement of said Capital National Bank was one purporting to show the condition of the Capital National Bank on the 9th day of December 1892, a copy of

which is hereto attached and made a part hereof as exhibit "A" and which was published in the daily state journal, of Lincoln, Nebraska, a paper of general circulation in said city and state.

Def'ts' Ex. "U," P. 10.

1253

The plaintiff further alleges that prior to the making of said loans represented by said several certificates of deposit bearing dates aforesaid he saw a statement made out by the said defendants as officers of said bank of date December 28, 1886, a copy of the same is hereby attached and marked exhibit "B" and made a part hereof and the plaintiff saw other statements of a similar kind and character made by the defendants herein prior to the date of making of said loans, or either one of them and he believed said reports and statements were a true and correct statement of the condition of said bank and relying on each and all of said statements loaned the money represented by the certificate of deposit aforesaid, yet this plaintiff alleges the fact to be that the statements of December 28, 1886, as well as the statement marked Exhibit "A" hereto attached as well as all other and each and every statement made and published by the said defendants and every one of them made prior to that 28 day of December 1892 were grossly false and untrue and unreliable. The resources of said bank were mistated, loans and discounts were not truly reported, the amount of stock and security were incorrectly stated. The statement of liability in no way stated the real and true liability of said bank. The Capital stock paid in being represented at $300,000.00 when in fact less than two-thirds of that amount had been paid in. The surplus fund in Exhibit "B" was stated at $12000 and in exhibit "A" at $6,000 and in said other statements at various and different sums of thousands of dollars when in truth and in fact there was no surplus fund. The undivided profits were represented to be in exhibit "B" at $28,439.38 and in exhibit "A" at $21,180.75 and in said other statements at large sums amounting to thousands of dollars when in truth and in fact there were no profits in said concern undivided at the time, or at any other time.

Def'ts' Ex. "U," P. 11.

1254

The amount of demand certificates of deposit outstanding were grossly and hugely incorrectly stated in each and every one of said statements at a much less amount than the true amount outstanding. The notes and bills rediscounted were falsely and incorrectly stated at a much less amount than was in fact outstanding against said bank at the time said statements and each one of them were made every particular item set forth in said statements and each one of them save only as were known by the comptroller of the currency of the United States from the records in his department were falsely and fraudulently and incorrectly mis-tated and misrepresented for the purpose of deceiving and misleading this plaintiff and for the purpose of inducing this plaintiff and others who might be thereby induced to deal with said bank and loan it money upon its demand certificate of deposit whereas if a true and accurate statement of the condition of the said bank at said times had been made

by the officers and directors making said statements and published as required by law and signed by them it would have shown said bank at said time to have been wholly insolvent and unable to meet its obligations and this plaintiff would not have loaned his money to the said bank or permitted said defendants to have obtained the same for said bank.

The plaintiff further alleges that thereafter when the several statements called for — the said comptroller of the currency were made and published they were each and every one entirely unreliable and falsely stated the resources and liability of said bank, when — a true statement made any time after the statement of December 28, 1896, until the closing of said bank by the comptroller it would have appeared to the plaintiff and been evidence that said bank was insolvent.

Def'ts' Ex. "U," P 12.

1255 This plaintiff from the time of seeing the first statement of this bank in 1886, aforesaid and especially prior to the making of his first loan to said bank on October 11, 1892, carefully observed and saw the published statement made by the defendants herein as officers and directors of said bank purporting to show the true condition of said bank at the several dates of their said several reports and relying upon said several reports and statement- and believing that the said defendants would not make a false and incorrect statement and having personal acquaintance with quite a number of said defendants this plaintiff was induced thereby and did loan to said bank the several sums of money represented by the said several demand certificates of deposit bering dates as aforesaid.

Plaintiff alleges that if any one of the several statements made by the defendants had stated the true condition of said bank he would not have parted *with* his money and loaned the same to the said bank. In the several statements made by the defendants herein purporting to show the condition of the said bank during the year 1892, no single item either of resources or liabilities except only such as could be verified in the office of the comptroller of the currency was properly or correctly stated and was falsely and incorrectly stated by the defendants for the purpose of misleading and deceiving the plaintiff and others and inducing him and others to loan or deposit money in said Bank. Under the head of resources except the item of the United States bond- and the redemption fund with the Treasurer of the United States were falsely overstated and enlarged while under the head of liabilities the amount of capital stock paid in surplus funds and undivided profits were all grossly and enor-

Def'ts' Ex. "U," P. 13.

1256 mously overstated while every other item except the item of national bank notes outstanding are falsely and grossly under stated and was so made and done by the defendants to induce this plaintiff and others to loan and deposit his money in said bank and that thereby the defendant- might profit out of the same and had the defendant officers of said bank made and published a true and correct statement showing the real condition of said bank on any of

the several dates for which statements were called by the comptroller and made and published by the defendants herein during the year 1892, said bank would have been shown to have been wholly insolvent and unable to meet its obligations and this plaintiff as well as others would not have loaned said bank any money or deposited any money therein.

The plaintiff herein saw the several statements herein as directors and officers of said bank from the statement of December 28, 1886, until the closing of said bank and relying upon the said statements made by said defendants as officers and directors of said bank was led to believe and did believe that said bank was solvent and in good financial condition and able to pay all of its debts and that his money would be entirely safe and relying upon said statements as to the condition of said bank and believing them true, did loan to said bank the money above set forth and had said officers and directors of said bank in any of their statements made prior to the loaning of his money made a true statement of the condition of said bank this plaintiff would not have loaned said bank his money as aforesaid and that the several statements made of the condition of said bank by the defendants after the part of said money

Def'ts' Ex. "U," P. 14.

had been loaned to the bank by the plaintiff had stated the true condition of said

1257 bank then this plaintiff would have made demand immediately for his money from said bank for the whole thereof, but relying upon the statements made by the defendants herein as officers and directors of said bank and believing them to be true he was induced to and did allow his money to remain in said bank until closed by the comptroller of the currency as aforesaid.

Plaintiff further represents that the several statements made by the defendants as aforesaid were made with the full knowledge and consent of each of the several defendants herein and each of said defendants had actual knowledge of the falsity and misstatement and uncorrect statement of the several statements made and published and referred to in this petition and if the said several defendants herein as officers and directors of said bank did not have actual knowledge of the falsity and incorrect and misleading parts of said reports then they and each of them were grossly negligent and careless of their duty in the management of the affairs of said corporation and they should and ought to have known of such deceit and falsity and incorrectness made therein and an examination into the affairs of and into the books and accounts of said bank at any of the several times herein referred to would have disclosed to the defendant- herein that their published reports were wholly false and untrue and that its resources at the several times named in the statements were not such as were stated in their different

Def'ts' Ex. "U," P. 15.

reports and would have disclosed to the defendants as officers and directors of said bank as well as to the plaintiff and others that the affairs of the bank were being mismanaged and its moneys and assets

1258 misappropriated and squandered and the defendants herein as officers and directors of said bank in failing to exercise the

slightest diligence to make the slightest investigation of the business of said corporation were grossly and wickedly negligent of their duties as such officers and directors and as the plaintiff for a great many years prior to the loan of his money as hereinbefore set forth had been well acquainted with and knew the business reputation and financial standing of each one of the defendants herein and had known them to be men who in the conduct of their own personal affairs were careful, watchful and prudent business men he was thereby led and induced to place confidence in their reports of the condition of said bank and he believed that the affiars of said bank under their care and control would be carried on and conducted in a safe and business like manner and that the several stat-ments made to the comptroller of the currency and published as required by law and verified by the several defendants could be relied upon as accurate and correct and so believing and so relying upon said reports and being deceived thereby he loaned the same to the said bank and by reason of the failure of the said several defendants, directors and officers of said bank to perform the duties required as such officers and by reason of the false stat-ments made by the defendants as aforesaid and by reason of mismanagement of the affairs of said bank, officers and directors of said bank insolvent this plain-plaintiff has suffered damages to the amount of $11,500 and interest thereon as aforesaid.

Under the banking law by which the Capital National bank was organized and carrying on business the total liabilities of any assignee, or any persons, or any company of corporations or firm for money borrowed including in the liabilities of a company or firm or the liabilities of the several members shall at no time exceed one tenth part of the capital stock of such as-ignee actually paid in and notwithstanding this provision of the law and in violation thereof, these defendants as directors and officers of said Capital Bank loaned to many persons more than the amount limited by law and especially loaned to one Ed. W. Mosher a brother of one of the defendants herein the sum of upwards of $109,000 the said sum is now due and owing from said Ed. W. Mosher to the receiver of the said Capital National Bank and said sums of money was loaned to said Ed. W. Mosher by the defendants herein as officers of said bank prior to the closing of said bank as aforesaid.

Def'ts' Ex. "U," P. 17.

1259

The defendants herein further in violation of law loaned to Charles W. Mosher $78,000 and upwards, the said C. W. Mosher being one of the defendants herein and president of the said Capital National Bank and claiming to act and did act as one of its directors and the said $78000 was loaned to the said Chas. W. Mosher by the defendants herein as officers and directors of the said Capital National Bank, which amount is now due and owing from said Charles W. Mosher to the receiver of said bank. The defendants herein as officers and directors of said bank prior to the closing of said bank loaned to Richard C. Outcalt one of the defendants herein and cashier of said bank $53,000 and upwards in violation of law

which sum is wholly due and owing from said R. C. Outcalt to the receiver of said Capital National Bank and the above sums of money *was* loaned to Ed. W. Mosher, Charles W. Mosher and Richard C. Outcalt, were wrongfully allowed to be taken out of said bank and disappeared and wholly lost through the negligence and carelessness of the several defendants herein and done with intent to deceive plaintiff and others and the said Richard C. Outcalt was the acting cashier of said bank.

Def'ts' Ex. "U," P. 17.

1260 By the law under which the Capital National Bank was organized it was not allowed to make or pay any dividends or any profits on hands to defendants or stockholders under ten per cent. of the capital stock, yet notwithstanding the law the defendants herein as officers and directors of said bank regularly declared dividends and to the stockholders of said bank the same thereby reducing the capital stock of said bank when in truth and in fact at no time mentioned in this petition had there been any profits nor was there any to be made by said bank and all dividends declared and money paid out by said bank for the same was in violation of law and by these several defendants as directors and officers of said bank the same was declared and paid out in violation of and contrary to the law under which said bank was organized and contrary to the duty of the said defendants and by reason of the several violations of the banking law as above set forth by these several defendants they have become and are liable to this plaintiff for the damages he has sustained by reason of their said acts in the sum of $11,500 together with interest thereon from the 11th day of October to the 28th day of December 1892 at the rate of seven per cent. per annum.

Wherefore plaintiff prays judgment against the several defendants herein and each of them in the sum of $11,500 together with interest on $9,500 from the 11th day of October 1892, and on the sum of $2,000 from December 28th, 1892 at the rate of seven per cent. per annum and costs of this action.

THOMAS BAILEY,
NORVAL BROS., &
LOWLEY & POUND &
BURR,
His Attorneys.

Def'ts' Ex. "U," P. 18.

1261 STATE OF NEBRASKA, *Seward County, ss:*

Thomas Bailey being first duly sworn on his oath says that he is the plaintiff in the above entitled action; that he has read the foregoing petition, knows the contents thereof and believes the facts therein stated to be true.

THOMAS BAILEY.

Subscribed in my presence and sworn to before me this 17th day of October 1893.

GEO. W. LOWLEY,
Notary Public.

[SEAL.]

Precipe.

To the Clerk of the District Court.

DEAR SIR: Please issue summons in the above entitled action and deliver the same to the sheriff of Lancaster County for service, endorse on the same that the plaintiff will take judgment for $11,500 together with interest on $9,500 from October 11, 1892 and on $2,000 from December 28, 1892 at the rate of seven per cent. per annum and costs of the action, make the same returnable according to law and oblige.

Copy.

$500. No. 3.

Capital National Bank.

LINCOLN, NEBR., *Oct.* 11, 1892.

Thomas Bailey has deposited in this bank five hundred Dollars payable to the order of self on return of this certificate properly endorsed.

No. 28158. Not subject to check.

O. F. FUNK, *For Cash.*

On margin: Interest at 3–5 or 6% if left 3–6 or 12 months. No interest after maturity.

Copy.

$500. No. 3.

Capital National Bank.

LINCOLN, NEB., *Dec.* 28, 1892.

Thomas Bailey has deposited in this bank five hundred dol-
1262 lars payable to the order of himself on return of this Certificate properly endorsed.

No. 28371. Not subject to check.

R. C. OUTCALT, *Cash.*

Def'ts' Ex. "U," P. 19.

On margin: Interest at 3–5 or 6 if left 3–6 or 12 months. No interest after maturity.

Copy.

$1000. No. 3.

Capital National Bank.

LINCOLN, NEB., *Dec.* 28*th*, 1892.

Thomas Bailey has deposited in this bank one thousand dollars, payable to the order of self on return of this certificate properly endorsed.

No. 28373. Not subject to check.

R. C. OUTCALT, *Cash.*

On margin: Interest at 3–5 or 6 if left 3–6 or 12 months. No interest after maturity.

Copy.

$1000. No. 3.

Capital National Bank.

LINCOLN, NEB., *Oct.* 11, 1892.

Thomas Bailey has deposited in this bank one thousand Dollars payable to the order of self on return of this certificate properly endorsed.

No. 28157. Not subject to check.

O. F. FUNK, *For Cash.*

On margin: Interest at 3–5 or 6% if left 3–6 or 12 months. No interest after maturity.

Copy.

$8000. No. 4.

Capital National Bank.

LINCOLN, NEB., *Oct.* 11, 1892.

Thomas Bailey has deposited in this bank eight thousand dollars payable to the order of self on return of this certificate properly endorsed.

No. 28156. Not subject to check.

O. F. FUNK, *For Cash.*

On margin: Interest at 3–5 or 6% if left 3–6 or 12 months. No interest after maturity.

Copy.

$500. No. 3.

Capital National Bank.

LINCOLN, NEB., *Dec.* 28, 1892.

Thomas Bailey has deposited in this bank five hundred dollars payable to the order of self on return of this certificate properly endorsed.

No. 28372. Not subject to check.

R. C. OUTCALT, *Cash.*

On margin: Interest at 3–5 or 6% if left 3–6 or 12 months
1263 No interest after maturity.

Def'ts' Ex. "U," P. 20.

1264 EXHIBIT "A."

Report of the Condition of the Capital National Bank, December 9, 1892.

Resources.

Loans and discounts	$768,601.44
Overdrafts secured and unsecured	6,217.74
U. S. Bonds to secure circulation	50,000.00

Stocks, securities etc		325.00
Due from approved reserve agents		107,090.01
Due from other national banks		17,800.33
Due from state banks and bankers		5,394.72
Banking house furniture and fixtures		5,770.00
Real estate and mortgages owned		38,617.92
Current expenses and taxes paid		14,286.28
Checks and other items		3,698.56
Exchanges for clearing house		8,841.16
Bills of other banks		2,355.00
Fractional paper currency, nickels and cents		298.71
Specie		26,789.50
Legal tender notes		17,431.00
Redemption fund with U. S. Treasurer (5% of circulation)		1,350.00
Total		$1,074,867.37

Liabilities.

Capital stock paid in		$300,000.00
Surplus fund		6,000.00
Undivided profits		21,180.75
National Bank notes outstanding		45,000.00
Individual deposits subject to check	$356,139.33	
Demand certificates of deposit	158,545.88	
Due to other national banks	81,574.14	
Due to state banks and bankers	47,372.89	
		643,732.24
Notes and bills rediscounted		59,054.38
		$1,074,867.38

STATE OF NEBRASKA, *Lancaster County, ss:*

I, R. C. Outcalt, cashier of the above named bank do solemnly swear that the above stat-ment is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed in my presence and sworn to before me this 15th day of December, 1892.

HAL C. YOUNG,
Notary Public.

Correct
C. W. MOSHER,
C. E. YATES,
R. O. PHILLIPS,
Directors.

Def'ts' Ex. "U," P. 21.

1265 EXHIBIT "B."

Report of the Condition of the Capital National Bank, at Lincoln, in the State of Nebraska, at the Close of Business, December 28, 1886.

Resources.

Loans and discounts		$737,426.12
Overdrafts		3,974.33
U. S. Bonds to secure circulation		50,000.00
Other stocks, bonds and mortgages		22,739.34
Due from approved and reserve agents		74,068.63
Due from other National Banks		56,215.29
Due from state banks and bankers		10,495.36
Real estate, furniture and fixtures		7,177.33
Current expenses and taxes paid		8,885.43
Premiums paid		7,188.43
Checks and other cash items		13,742.02
Bills of other banks		3,712.00
Fractional paper currency, nickels and cents		216.42
Specie		27,308.00
Legal tender notes		10,400.00
Redemption with U. S. Treasurer (5% of circulation)		1,900.00
Total		$1,035,488.92

Liabilities.

Capital stock paid in		$300,000.00
Surplus fund		12,000.00
Undivided profits		28,439.38
National Bank notes outstanding		45,000.00
Individual deposits subject to check	$414,962.35	
Demand certificates of deposit	40,859.66	
Due to other National Banks	107,648.27	
Due to state banks and bankers	34,448.66	
		597,918.94
Notes and Bills rediscounted		52,090.60
Total		$1,035,448.92

STATE OF NEBRASKA, *Lancaster County, ss:*

I, C. W. Mosher president of the above bank do solemnly swear that the above is true to the best of my knowledge and belief.

C. W. MOSHER, *President.*

Subscribed in my presence and sworn to before me this 11th day of October 1886.

[SEAL.] E. R. SMITH, *N. P.*

Correct.

Attest:

C. W. MOSHER,
C. E. YATES,
D. E. THOMPSON,
Directors.

Def'ts' Ex. "U." P. 22

1266 Endorsed: In the District Court, Lancaster County Nebr.—Thomas Bailey,—*vs.* Charles W. Mosher *et al.*,—Petition—Clerk's office, District Court. Filed Oct. 27, 1893. E. Baker, Clerk Dist. Court.

Summons.

STATE OF NEBRASKA, *Lancaster County, ss:*

The State of Nebraska to the Sheriff of said County, Greeting:

You are hereby commanded to notify Charles W. Mosher, Homer J. Walsh, Rollo O. Phillips, Charles E. Yates, Ellis P. Hamer Ambrose P. S. Stuart and Richard C. Outcalt, Defendants that they have been sued by Thomas Bailey, plaintiff in the District Court of the third judicial district in and for said County of Lancaster, and that unless they answer by the 27th day of November A. D. 1893, the petition of the said Thomas Bailey, plaintiff filed against them in the Clerk's office of said Court, such petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on or before the 6th day of November, A. D. 1893.

Witness my hand and seal of said court, at Lincoln, this 27th day of October A. D. 1893.

E. BAKER, *Clerk.*
[SEAL.] By J. D. HARRIS, *Deputy.*

Endorsed: Summons—District Court. Lancaster County.

9-92 Doc. 9 Page 92.

THOMAS BAILEY, Plaintiff,
vs.
CHARLES W. MOSHER ET AL., Defendants.

If defendant fail to appear and answer the plaintiff will take judgment for $11,500.00 together with 7 per cent. interest on $9500 from October 11th, 1892 and $2000.00 with 7 per cent. from Dec. 28th, 1892 and costs of suit.

Attest:— E. BAKER, *Clerk,*
By J. D. HARRIS, *Deputy.*

Def'ts' Ex. "U," P. 23.

1267 Returnable Nov. 6th, 1893.

Received Oct. 28, 1893.

POUND & BURR,
Plaintiff's Attorneys.
SAM McCLAY, *Sheriff.*

THE STATE OF NEBRASKA, *Lancaster County, ss:*

I hereby certify that on the 2nd day of November 1893 I served the within writ of summons on the within named Charles W. Mosher, Homer J. Walsh, Rollo O. Phillips, Charles E. Yates, Ellis P. Hamer, Ambrose P. S. Stuart and Richard C. Outcalt, by delivering to each of them a true and certified copy hereof, with all endorsements thereon, as required by law.

SAM McCLAY, *Sheriff,*
By LOUIS OTTO, *Deputy.*

Fees.

Service and return	$2.00
Copy	1.75
Mileage	.30
	$4.05

Clerk's office, District Court:—Filed Nov. 6, 1893.

E. BAKER,
Clerk Dist. Court.

Petition for Removal to Federal Court.

In the District Court of Lancaster County, Nebraska.

THOMAS BAILEY
vs.
CHARLES W. MOSHER, HOMER J. WALSH, ROLLA O. PHILLIPS, CHARLES E. YATES, ELLIS P. HAMER, AMBROSE P. S. STUART, and RICHARD C. OUTCALT.

Petition for Removal to Federal Court.

Your petitioners, the defendants named in the above entitled cause, show to this Honorable Court, that the matter and amount in dispute in the above entitled suit exceeds exclusive of interest and costs, the sum of two thousand dollars. ($2000.00)

That the plaintiff has filed a petition in said Court showing that he was an individual depositor in the Capital National Bank of Lincoln, Nebraska, and alleging that your petitioners were directors of said banks that said bank was a corporation organized as a national banking association under and by virtue of the national banking laws of the United States and that your petitioners in making reports of the resources and liabilities of said bank to the Comptroller of the Currency, and in publishing the same in the local newspapers as required by the provisions of said banking law, failed to set forth the true condition of said bank and by such reports showed the resources of the bank to be much larger than they were in fact and the liabilities much less than they were in fact, and that these reports were either falsely and fraudulently made designedly and willfully by your petitioner or that they ignorantly and negligently allowed the same to be issued, deceiving the plaintiff into depositing his money in said bank to his damage.

Def'ts' Ex. "U," P. 24.

1268

Your petitioners aver that a controversy arises in said suit between the plaintiff and your petitioners as defendants, under the law of the United States known as the National Banking Act; that the plaintiff's alleged cause of action rests upon the requirements of the laws of the United States and said plaintiff claims and will claim in the prosecution of his suit; that he was an individual depositor and creditor has the right to sue and recover damages from your petitioners as directors of said National Banking Association, without any forfeiture of the charter of said bank, and without the suit being authorized either by the comptroller of the currency or the receiver of the bank, which receiver has been appointed

Def'ts' Ex. "U," P. 25.

by the Comptroller of the Currency, and the said bank is now in the charge and control and was under such charge and control
1269 and management at the time of the commencement of this action; whereas your petitioners the defendants in said cause of action, claim that by a proper construction of the national banking act and the duties of your petitioners as directors under the laws of the United States they are not personally liable to the plaintiff as a depositor and creditor in the action which he has brought, or otherwise, and the said action being one arising under the laws of the United States, said Court has no jurisdiction to entertain alleged cause of action set up in plaintiff's petition.

That in determining the controversy between the plaintiff and these petitioners as defendants, there necessarily arises a federal question to be determined by the Court.

Your petitioners therefore claim that this action ought to be removed from this said court to the Federal Court and your petitioners herewith offer a good and sufficient bond with surety for their entering in the Circuit Court of the United States for the District of Nebraska, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said Circuit Court of the United States if said Court shall hold that this suit was wrongfully or improperly removed thereto.

Your petitioners therefore pray this Honorable Court to proceed no further therein, and to accept the said surety and bond, and to cause the record herein to be removed into said Circuit Court of the United States in and for the District of Nebraska, and to this end your petitioners will ever pray.

Def'ts' Ex. "U," P. 26.

By MARQUETT, DEWEESE & HALL,
1270 *Att'ys for Homer J. Walsh, Rolla O. Phillips, Chas. E. Yates, Ellis P. Hamer, Ambrose P. S. Stuart, Chas. W. Mosher, Richard C. Outcalt.*
By CHAS. O. WHEDON, *Their Att'ys.*

Endorsed: In the District Court, Lancaster County, Nebr. Thomas Bailey *vs.* Charles W. Mosher, *et al.* Petition for removal. Clerk's office, District Court. Filed Nov. 27, 1893. E. Baker, Clerk Dist. Court.

Bond for Removal.

In the District Court of Lancaster County, Nebraska.

THOMAS BAILEY
vs.
CHARLES W. MOSHER, HOMER J. WALSH, ROLLA O. PHILLIPS, CHARLES E. YATES, ELLIS P. HAMER, AMBROSE P. S. STUART, and RICHARD C. OUTCALT.

Undertaking.

Know all men by these presents, That, we Homer J. Walsh, Rolla O. Phillips, Charles E. Yates, Ellis P. Hamer, and Ambrose P. S. Stuart, as principals and A. B. Minor as surety, are held and firmly bound unto Thomas Bailey in the penal sum of three hundred

Dollars, lawful money of the United States for the payment of which well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

The condition of this obligation is such, that if the said Homer J. Walsh, Rolla O. Phillips, Charles E. Yates, Ellis P. Hamer, and Ambrose P. S. Stuart, shall enter and file or cause to be entered and filed in the Circuit Court of the United States in and for the District of Nebraska, on the first day of its next session, copies of all proceed-s, pleadings, depositions, testimony and other pleadings in a certain suit or action now pending in the District Court of the County of Lancaster and state of Nebraska, in which Thomas Bailey is plaintiff, and Charles W. Mosher, Homer J. Walsh Rolla O. Phillips, Charles E. Yates Ellis P. Hamer, Ambrose P. S. Stuart, David E. Thompson, and Richard C. Outcalt are defendants and shall do such other appropriate acts as by the Acts of Congress in that behalf are required to be done upon the removal of such suits from said state court into the United States Court, then this obligation to be void, otherwise of force.

Def'ts' Ex. "U," P. 27.

1271

R. D. PHILLIPS.
H. J. WALSH.
C. E. YATES.
A. P. S. STUART.
E. P. HAMER.
A. B. MINOR.

STATE OF NEBRASKA *Lancaster County, ss:*

I, A. B. Minor of said County the surety named in the foregoing bond, being duly sworn do depose and say that I am a resident of the State of Nebraska, and a property holder therein; that I am worth the sum of three hundred dollars over and above all my debts and liabilities and exclusive of property exempt from execution; that I have property in the State of Nebraska, liable to execution for the value of more than three hundred dollars.

A. B. MINOR.

Sworn to before me and subscribed in my presence by A. B. Minor this 18th day of November A. D. 1893.

J. A. KILROY,
Notary Public.

[SEAL.]

My commission as Notary Public will expire the — day of May 1894.

Endorsed: In District Court, Lancaster County, Nebr. Thomas Bailey *vs.* Chas. W. Mosher, *et al.* B-ank for Removal Clerk's office District Court, Filed Nov. 27, 1893. E. Baker, Clerk Dist. Court.

Def'ts' Ex. "U," P. 28.

1272 *Demurrer.*

In the District Court of Lancaster County, Nebraska.

THOMAS BAILEY
vs.
CHARLES W. MOSHER, HOMER J. WALSH, ROLLA O. PHILLIPS, CHARLES E. YATES, ELLIS P. HAMER, AMBROSE P. S. STUART, and RICHARD C. OUTCALT.

Demurrer.

Now comes the defendants Homer J. Walsh, Rolla O. Phillips Charles E. Yates, Ellis P. Hamer, and Ambrose P. S. Stuart, and appearing for themselves demur to the petition filed by the plaintiff in the above entitled cause, for the following reasons.

1st. The Court has no jurisdiction of the subject of the action set forth in the petition.

2nd. The plaintiff has no legal capacity to sue and maintain the alleged cause of action against these defendants.

3rd. There is a defect of parties plaintiff.

4th. The petition does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against these defendants.

MARQUETTE, DEWEESE & HALL,
Att'ys for Defendants Named Herein.

Endorsed: In the District Court Lancaster County, Neb. Thomas Bailey *vs.* Charles W. Mosher, *et al.*, Demurrer, Clerk's Office District Court Filed Nov. 27, 1893 E. Baker, Clerk Dist. Court.

Certificate.

STATE OF NEBRASKA, *Lancaster County, ss:*

I, E. Baker, Clerk of the District Court
Def'ts Ex. "U," P. 29. Third Judicial District of Nebraska, in and for said County, do hereby certify that the above and foregoing is a true and correct copy of all the papers filed with all the endorsements on each, together with
1273 all proceedings and final judgment of our said Court, in a cause therein, wherein Thomas Bailey is plaintiff and Charles W. Mosher, *et al.* are defendants as the same appears fully upon the records and files of said Court, and now in my charge remaining as Clerk aforesaid.

In testimony whereof I have hereunto set my hand officially and attached the seal of said Court at Lincoln, this 23rd day of December A. D. 1893. E. BAKER, *Clerk, D. C.*,
[SEAL.] By J. D. HARRIS, *Deputy.*

Trans. $6.75.

Pleas.

In the District Court of the Third Judicial District of Nebraska, in and for the County of Lancaster.

At the September A. D. 1893 term of said Court, begun and held in the City of Lincoln, in said County and State, on the 25th day

of September, in the year of our Lord one Thousand Eight hundred and ninety three, and on a day therein to-wit: On the 30th day of December A. D. 1893 (that being the 82nd Judicial day of said September A. D. 1893 term of said Court. Present Honorable Jesse B. Strode, Judge Presiding Sam McClay, Sheriff and E. Baker, Clerk, the following proceedings among others were had and done, to-wit:

THOMAS BAILEY
vs.
CHARLES W. MOSHER ET AL.

This cause now comes on to be heard upon the application of the defendants for the removal of this cause to the Circuit Court of the United States, in and for the District of Nebraska, and the said defendants having offered a bond herein for
Def'ts' Ex. "U," P. 30. the removal of said cause pursuant to statute, it is by the Court ordered that the bond of the said defendants as to form and sufficiency be and the same hereby is approved, and that the question of removal of this cause be, and the same hereby is removed for future
1274–1296 determination.

Certificate.

THE STATE OF NEBRASKA, *Lancaster County, ss:*

I, E. Baker, Clerk of the District Court, Third Judicial District of Nebraska, in and for said County do hereby certify that the above and foregoing as a true and correct copy of the Order, made by said Court, on the 30th day of December A. D. 1893 in a cause therein, wherein Thomas Bailey is plaintiff, and Charles W. Mosher *et al.* are defendants, as the same appears upon Court Journal "8" at page 249 of the record of said Court and now in my charge remaining as Clerk aforesaid.

In testimony whereof I have hereunto set my hand officially and attached the seal of said Court at Lincoln, this 6th day of January A. D. 1894.

E. BAKER, *Clerk,*
[SEAL.] By J. D. HARRIS, *Deputy.*

Filed Jan. 8, 1894.
ELMER D. FRANK, *Clerk.*

UNITED STATES OF AMERICA, *District of Nebraska, ss:*

I, George H. Thummel, Clerk of the Circuit Court of the United States for the District *Court* of Nebraska do hereby certify the foregoing to be Original Transcript in the case of Thomas Bailey *vs.* Charles W. Mosher, *et al.* No. 165 Q. as the same appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and the Seal of said Court at Omaha, in said District this 12th day of June A. D. 1902.

[U. S. Cir. Court Seal.]

GEO. H. THUMMEL, *Clerk.*

Def'ts' Ex. "U," P. 31.

* * * * * * *

1297 Mr. THOMAS: The plaintiffs offer in evidence exhibit No. 1074.

FOLD OUTS 276 - 290

ARE TOO LARGE TO BE FILMED

1312–1322 The opinion in the case of Thomas Bailey *vs.* Mosher *et al.* is offered in evidence, as found in Vol. 63 of the Federal Reporter commencing at page 488 and ending at the bottom of page 491.

* * * * * * *

1323 & 1324 In the District Court of Seward County, State of Nebraska.

THE STATE OF NEBRASKA, *Lancaster County, ss:*

JONES NATIONAL BANK, Plaintiff,
vs.
CHARLES W. MOSHER ET AL., Defendant-.

Depositions.

Depositions of sundry witnesses taken before me, a Notary Public, duly commissioned and qualified for and residing in the County of Lancaster and State of Nebraska on the 7th and 8th day- of April, in the year 1902, between the hours of 9 A. M. and 6 P. M., at the office of Ricketts & Ricketts, #414 Richards Block, in the city of Lincoln, in said County, pursuant to the annexed notice, to be read in evidence on behalf of the plaintiff in an action pending in the District Court of Seward County, in which Jones National Bank is Plaintiff, and Charles W. Mosher, *et al.* are Defendants. John W. McDonald, of lawful age, being by me first duly examined, cautioned, and solemnly sworn, as hereinafter certified, deposes and says as follows, viz:

Appearances.

For plaintiff, R. S. Norval and J. J. Thomas.
For defendants, J. W. Deweese, and C. O. Whedon.

Witness examined by Mr. THOMAS:

* * * * * * *

1325–1359 1 Q. You may state your name?
A. John W. McDonald.
2 Q. You are Receiver for the Capital National Bank of Lincoln, Nebraska?
A. Yes sir.

* * * * * * *

1360 April 8, 1902, 2 o'clock P. M.—Direct examination of witness McDonald continued. Examined by Mr. THOMAS:

197 Q. I hand you original certificate Number 21379 of the Capital National Bank, and Exhibit "A," and ask you to state whether or not Exhibit "A" is a true and correct photographic reproduction of the original certificate, together with all endorsements thereon?
A. Yes, I think it is, so far as I can see.

198 Q. Neither the original nor the copy bear any endorsements?
A. No.

1361 We now offer in evidence Exhibit "A," being a photographic reproduction of certificate Number 21379 of the Capital National Bank, and attach the same to the deposition of the witness, and make it a part thereof, and also make it a part of the deposition of the witness John E. Hill, whose testimony is taken at the same time.
(Exhibit "A" is as follows:—)

EXHIBIT "A." (Lo. Ricketts, N. P.)

$50,000.00.

Capital National Bank.

LINCOLN, NEB., *Dec.* 23, 1889.

J. E. Hill Treas. has deposited in this Bank Fifty Thousand Dollars payable to the order of self on return of this Certificate properly endorsed.
No. 21379 Not subject to check.

C. W. MOSHER, *Pt.*

Interest at —— if left —— months.
No interest after maturity.
Paid Jan. — 1898 Capital Nat'l Bank Lincoln Neb.

199 Q. I hand you original certificate of deposit Number 23593, of the Capital National Bank, and Exhibit "B," and ask you to state whether or not Exhibit "B" is a true and correct photographic reproduction of the original certificate, together with all endorsements thereon?
A. Yes I think it is, so far as I can see.
200 Q. Do the original and copy bear any endorsements?
A. Yes.

1362 We now offer in evidence Exhibit "B," being a photographic reproduction of certificate Number 23593 of the Capital National Bank, and attach the same to the deposition of the witness, and make it a part thereof, and also make it a part of the deposition of the witness John E. Hill, whose testimony is taken at the same time.

Exhibit "B" is as follows:—

EXHIBIT "B." Lo. Ricketts, N. P.

$40,000.00.

Capital National Bank.

LINCOLN, NEB., *Dec. 9th*, 1890.

J. E. Hill State Treasurer has deposited in this Bank Forty Thousand Dollars payable to the order of himself on return of this Certificate properly endorsed.

No. 23593 Not subject to check.

C. W. MOSHER, *P't.*

C. W. MOSHER, *P't.*
J. E. HILL, *Treasurer.*

Paid Nov. 3, 1892 Capital Nat'l Bank Lincoln, Neb.

201 Q. I hand you original certificate Number 24452 of the Capital National Bank, and Exhibit "C," and ask you to state whether or not Exhibit "C" is a true and correct photographic reproduction of the original certificate, together with all endorsements thereon?

A. Yes I think it is, so far as I can see.

202 Q. Do the original and copy bear any endorsements?

A. Yes.

1363 We now offer in evidence Exhibit "C," being a photographic reproduction of certificate Number 24452 of the Capital National Bank, and attach the same to the deposition of the witness, and make it a part thereof, and also make at a part of the deposition of the witness John E. Hill, whose testimony is taken at the same time.

Exhibit "C" is as follows:—

EXHIBIT "C." Lo. Ricketts, N. P.

$100250.00.

Capital National Bank.

LINCOLN, NEB., *Apr.* 24, 1891.

J. E. Hill Treas. has deposited in this Bank One Hundred Thousand & two hundred & fifty Dollars payable to the order of self on return of this Certificate properly endorsed.

No. 24452 Not subject to check.

C. W. MOSHER, *P't.*

Interest at —— if left —— months.
No interest after maturity.

J. E. HILL, *Treas.*,
By C. W. MOSHER,
Treas. of Nebr. Relief Fund.

Paid Capital Nat'l Bank Lincoln, Nebr.

203 Q. I hand you original certificate Number 24937 of the Capital National Bank, and Exhibit "D," and ask you to state whether or not Exhibit "D" is a true and correct photographic reproduction of the original certificate, together with all endorsements thereon?

1364 A. Yes, I think it is, so far as I can see.

204 Q. Neither the original nor the copy bear any endorsements?

A. No.

We now offer in evidence Exhibit "D," being a photographic reproduction of certificate Number 24937 of the Capital National Bank, and attach the same to the deposition of the witness, and make it a part thereof, and also make it a part of the deposition of the witness John E. Hill, whose testimony is taken at the same time.

Exhibit "D" is as follows:—

EXHIBIT "D." Lo. Ricketts, N. P.

#11445.

Otoe Co. Coupons.

$14650.00.

Capital National Bank.

LINCOLN, NEB., *July* 18, 1891.

J. E. Hill Treas. has deposited in this Bank Fourteen thousand six hundred fifty & no/100 Dollars payable to the order of self on return of this Certificate properly endorsed.

No. 24937 Not subject to check.

—— ——.

Interest at —— if left —— months.

No interest after maturity.

Paid Capital Nat'l Bank Lincoln, Neb.

205 Q. I hand you original certificate Number 24941 of the Capital National Bank, and Exhibit "E," and ask you to state whether or not Exhibit "E" is a true and correct photographic reproduction of the original certificate, together with all endorsements thereon?

1365 A. Yes, I think it is, so far as I can see.

206 Q. Neither the original nor the copy bear any endorsements?

A. No.

We now offer in evidence Exhibit "E," being a photographic reproduction of certificate Number 24941 of the Capital National Bank, and attach the same to the deposition of the witness, and make it a part thereof, and also make it a part of the deposition of the witness John E. Hill, whose testimony is taken at the same time.

Exhibit "E" is as follows:—

EXHIBIT "E." Lo. Ricketts, N. P.

Lancaster Co. Coupons.

$10000.00.

Capital National Bank.

LINCOLN, NEB., *July* 20, 1891.

J. E. Hill St. Treas. has deposited in this Bank Ten Thousand & no/100 Dollars payable to the order of self on return of this Certificate properly endorsed.
No. 24941 Not subject to check.

O. FUNKE, *For C.*

Interest at —— if left —— months.
No interest after maturity.
Paid Capital Nat'l Bank Lincoln, Neb.

1366 207 Q. I hand you original certificate Number 25097 of the Capital National Bank, and Exhibit "F," and ask you to state whether or not Exhibit "F" is a true and correct photographic reproduction of the original certificate together with all endorsements thereon?
A. Yes, I think it is, so far as I can see.
208 Q. Neither the original nor the copy bear any endorsements?
A. No.

We now offer in evidence Exhibit "F," being a photographic reproduction of certificate Number 25097 of the Capital National Bank, and attach the same to the deposition of the witness, and make it a part thereof, and also make it a part of the deposition of the witness John E. Hill, whose testimony is taken at the same time.
Exhibit "F" is as follows:—

EXHIBIT "F." Lo. Ricketts, N. P.

$50,000.00.

Capital National Bank.

LINCOLN, NEB., *Aug.* 17, 1891.

J. E. Hill Treas. has deposited in this Bank Fifty Thousand Dollars payable to the order of self on return of this Certificate properly endorsed.
No. 25097 Not subject to check.

C. W. MOSHER, *P't.*

Interest at —— if left —— months.
No interest after maturity.
Paid Jan. 6, 1893 Capital Nat'l Bank Lincoln, Neb.

1367 209 Q. I hand you original certificate Number 25047 of the Capital National Bank, and Exhibit "G," and ask you

to state whether or not Exhibit "G" is a true and correct photographic reproduction of the original certificate, together with all endorsements thereon?

A. Yes, I think it is, so far as I can see.

210 Q. Do the original and copy bear any endorsements?

A. Yes.

We now offer in evidence Exhibit "G," being a photographic reproduction of certificate Number 25047 of the Capital National Bank, and attach the same to the deposition of the witness, and make it a part thereof, and also make it a part of the deposition of the witness John E. Hill, whose testimony is taken at the same time.

Exhibit "G" is as follows:—

EXHIBIT "G." Lo. Ricketts, N. P.

$37,975.00.

Capital National Bank.

LINCOLN, NEB., *Aug.* 5, 1891.

J. E. Hill Treas. has deposited in this Bank Thirty Seven Thousand nine hundred & seventy five Dollars payable to the order of self on return of this Certificate properly endorsed.

No. 25047 Not subject to check.

C. W. MOSHER, *Pt.*

Interest at Apr. coupons if left —— months.
No interest after maturity.

C. W. MOSHER, *Pr't.*

Or order for collection.
Account of Treasurer of State of Nebraska.

J. E. HILL, *Treasurer.*
G. M. BARTLETT.

Paid Capital Nat'l Bank Lincoln, Neb.

1368 211 Q. I hand you original Certificate Number 25636 of the Capital National Bank, and Exhibit "H," and ask you to state whether or not Exhibit "H" is a true and correct photographic reproduction of the original certificate together with all endorsements thereon?

Objected to as incompetent and not the best evidence.

A. Yes, I think it is, so far as I can see.

212 Q. Do the original and copy bear any endorsements?

A. Yes.

We now offer in evidence Exhibit "H," being a photographic reproduction of certificate Number 25636 of the Capital National Bank, and attach the same to the deposition of the witness, and make it a part thereof, and also make it a part of the deposition of

the witness John E. Hill, whose testimony is taken at the same time.

Exhibit "H" is as follows:—

EXHIBIT "H." Lo. Ricketts, N. P.

$50,000.00

Capital National Bank.

LINCOLN, NEB., *Nov.* 18, 1891.

J. E. Hill Treas. has deposited in this Bank Fifty Thousand Dollars payable to the order of self on return of this Certificate properly endorsed.

No. 25636 Not subject to check.

C. W. MOSHER, *P't.*

Interest at —— if left —— months.

No interest after maturity.

J. E. HILL, *Treas.*

Paid May 21, 1892 Capital National Bank Lincoln, Nebraska.
Paid May 21, 1892 Capital Nat'l Bank Lincoln, Nebr.

1369 213 Q. I hand you certificate Number 25862 of the Capital National, and Exhibit "I," and ask you to state whether or not Exhibit "I" is a true and correct photographic reproduction of the original certificate, together with all endorsements thereon?

Objected to as incompetent and not the best evidence.

A. Yes, I think it is, so far as I can see.

214 Q. Do the original and the copy bear any endorsements?

A. Yes.

We now offer in evidence Exhibit "I," being a photographic reproduction of certificate Number 25862 of the Capital National Bank, and attach the same to the deposition of the witness, and make it a part thereof, and also make it a part of the deposition of the witness John E. Hill, whose testimony is taken at the same time.

Exhibit "I" is as follows:—

EXHIBIT "I." Lo. Ricketts, N. P.

$37114.75.

Capital National Bank.

LINCOLN, NEB., *Dec.* 22, 1891.

J. E. Hill, Treas. has deposited in this Bank Thirty seven thousand one hundred fourteen & 75/100 Dollars payable to the order of self on return of this Certificate properly endorsed.

No. 25862 Not subject to check.

C. W. MOSHER, *P't.*

Interest at —— if left —— months.

No interest after maturity.

Pay C. W. Mosher Pr't Or order for collection, Account of Treasurer of State of Nebraska.

J. E. HILL, *Treasurer.*
BARTLETT.

Paid 1898 Capital Nat'l Bank Lincoln Nebr.

1370–1373 215 Q. I hand you original certificate Number 25861 of the Capital National Bank, and Exhibit "J," and ask you to state whether or not Exhibit "J" is a true and correct photographic reproduction of the original certificate, together with all endorsements thereon?

A. Yes, I think it is, so far as I can see.

216 Q. Neither the original nor the copy bear any endorsements?

A. No.

We now offer in evidence Exhibit "J," being a photographic reproduction of certificate Number 25861 of the Capital National Bank, and attach the same to the deposition of the witness, and make it a part thereof, and also make it a part of the *of the* deposition of the witness John E. Hill, whose testimony is taken at the same time.

Exhibit "J" is as follows:—

EXHIBIT "J." Lo. Ricketts, N. P.

$38114.75.

Capital National Bank.

LINCOLN, NEB., *Dec.* 22, 1891.

J. E. Hill Treasurer has deposited in this Bank Thirty Eight Thousand one hundred & fourteen 75/100 Dollars payable to the order of self on return of this Certificate properly endorsed.

No. 25861 Not subject to check.

C. W. MOSHER, *P't.*

Interest at —— if left —— months.
No interest after maturity.
Paid Dec. 22, 1891 Capital Nat'l Bank Lincoln Nebr.

* * * * * * *

1374 Redirect examination by Mr. THOMAS:

231 Q. Will you make examination of the books, records, and documents of the Capital National Bank, and qualify yourself, so that you will be able to identify them as the books of the Capital National Bank, in event your deposition is taken within one or two weeks from this date?

A. Well, I would not like to answer that question. I don't know.

232 Q. Within what time do you think you could qualify yourself to testify to the contents of the books, or as to the identity of the books and documents, as being the books, documents, and papers of the Capital National Bank, of which you are receiver,

referring to the books, papers, and documents now in your possession as receiver of the Capital National Bank?

A. Well, that question I would not like to answer. I do not know how long it would take me. I don not know positively whether I could qualify, and I do not know how much time I would be justified in giving to it. It is a question that I am really not competent to answer.

232 Q. Will you make an effort to qualify yourself with reference to the matters hereinbefore referred to?

1375 A. I am not a lawyer, and I do not know what would be necessary to do to qualify.

234 Q. You are an accountant and bookkeeper, are you not?

A. I am hardly a bookkeeper. I have had more or less to do with them.

235 Q. You have had experience in examining banks and other accounts for the government as special examiner?

A. Yes, some. That work had to do almost entirely with examining insolvent banks in the hands of a receiver, and the examining of receiver's books, and not the books of the Bank.

236 Q. Will you make an effort, or will you make an examination of the books and ascertain whether you can qualify yourself with reference to the matter above referred, and report the same to the plaintiff in this case, H. T. Jones, its president, or Mr. Norval, or myself?

A. Well, not knowing what that would require, I would not like to answer that question.

237 Q. Would you say that you will make an effort at all to qualify yourself to testify to matters hereinbefore referred to, and report as above?

A. Well, I am very frank to say I would much prefer not to. It puts a lot of burden on me which I don't care to assume, and I don't know whether I can do it anyhow.

1376 238 Q. Will you please state whether or not you will do it?

A. I prefer not to state that. It is a matter I would want to think about a little.

239 Q. How long do you want to think over it?

A. I can't tell that.

240 Q. How soon will you be able to tell that?

A. I can't tell that.

241 Q. Don't you think that by examining the books you could qualify yourself to testify as to what they showed, and qualify yourself so as to testify whether or not they are a part of the books, documents, and papers of the Capital National Bank?

A. I would not like to answer that. I cannot tell.

242 Q. Will you make an examination and qualify yourself to testify as to what books, documents, and papers in your possession as receiver are the books, documents, and papers of the Capital National Bank?

A. You mean all of the books and documents purporting to be books of the Capital National Bank?

243 Q. Yes Sir, or such as we may have to call on you for in

taking depositions hereafter, which I will state will not comprise near all of the books, documents, and papers of the
1377–1381 Bank?

A. I cannot tell whether I can, or whether I will.

244 Q. Can you tell whether or not you will make an effort to ascertain these facts above referred to?

A. No, I would not like to say that I will make an effort to do it. I don't know what labor it would involve, or whether I could do it or not, so that at this time I cannot say.

JOHN W. McDONALD.

Subscribed in my presence and sworn to before me this 11 day of April, 1902.

LO. RICKETTS,
[SEAL.] *Notary Public.*

* * * * * * *

1382 JOHN E. HILL, of lawful age, being by me first duly examined, cautioned, and solemnly sworn, as hereinafter certified, deposes and says as follows, viz:

Examined by R. S. NORVAL:

245 Q. Where do you reside Mr. Hill?

A. Lincoln, Nebraska.

246 Q. How long have you resided in Lincoln, Nebraska?

A. Eleven years.

247 Q. You may state what official position, if any, you ever held in the state of Nebraska?

A. I held the position of State Treasurer.

248 Q. From what time, and to what time, did you hold the position of State Treasurer of this state?

A. From the first week in January, 1889 to the first week in January, 1893.

249 Q. During the time you were holding the office of state treasurer of this state, and while the Capital National Bank, located at Lincoln, Nebraska, was in business, did you have any business relations or dealings with the Capital National Bank?

A. I did, as state treasurer.

250 Q. I now hand you Exhibit "A," which was identified by Mr. McDonald, Receiver of the Capital National Bank. You may examine that certificate, which bears number 21379, dated December 23rd, 1889, and payable to the order of J. E. Hill, Tr., for the face value of $50,000, and state if you ever had any transaction of that character with the Capital National Bank as state treasurer, or in any other capacity?

1383 A. I have no recollection of having any transaction of that character.

251 Q. You may state if you as state treasurer, or otherwise, deposited $50,000 with the Capital National Bank of Lincoln, Nebraska, on December 23, 1889, and received the original certificate of which Exhibit "A" is a copy?

A. I did not.

252 Q. You made no deposit of that kind or character at that time?

A. No sir.

253 Q. You may state if you ever received from the Capital National Bank, or any one for the Capital National Bank, the amount specified in this certificate, to-wit:—$50,000, on January 6, 1893, or at any other time, in payment of the same?

A. I did not.

254 Q. You may state whether you ever authorized any one to draw that amount, the amount of that certificate, from the Bank for you as state treasurer, or otherwise?

A. No sir, I never authorized any one.

255 Q. You may state if you ever endorsed this certificate, or authorized any one to endorse it for you?

A. No sir, I did not, not authorized any one to do it for me.

256 Q. I now hand you Exhibit "B," which has been identified by the preceeding witness, Mr. McDonald, receiver, which is certificate of deposit for $40,000, dated December 9, 1890, and payable to J. E. Hill, State Treasurer, bearing Number 23593, and signed by C. W. Mosher, Pt., and state if you ever saw that certificate before?

1384 A. I have no knowledge of ever seeing this certificate.

257 Q. You may state whether or not the certificate, Exhibit "B," which I have just handed you, and which is referred to in the preceeding question, represented a business transaction between you as state treasurer, and the Capital National Bank of Lincoln, Nebraska?

A. Yes, it did.

258 Q. You may state if you deposited with the Capital National Bank of Lincoln, Nebraska the amount specified in Exhibit "B" on the date therein specified?

A. Yes sir, there is no question but what the amount was deposited.

259 Q. You may state if you drew from the Bank the amount mentioned in the certificate about the date of its stamp "paid" on the face of the certificate, as state treasurer?

A. Yes, the amount evidently was drawn.

260 Q. How is that?

A. Yes sir.

261 Q. I now hand you Exhibit "C," which was identified by the preceeding witness, Mr. McDonald, receiver, which bears date April 24, 1891, payable to the order of J. E. Hill, Treas., for the face value of $100,250, bearing Number 24452, and ask you to state if you ever saw that certificate?

1385 A. I have no remembrance of seeing that certificate.

262 Q. You may state Mr. Hill if that certificate was ever in your possession as state treasurer, or otherwise, until it was produced here by the receiver today?

A. No sir, that never was held by me as state treasurer.

263 Q. You may state whether that represented a transaction

between you as state treasurer, or any one for you as state treasurer with the Capital National Bank?

A. No sir, I never had any such business transaction.

264 Q. You may state if you at that time, or at any other time, had a transaction with the Bank for that amount as state treasurer or otherwise?

A. No sir.

265 Q. You may state if you, or any one for you, or in your behalf, deposited that amount with the Capital National Bank at that time?

A. They did not.

266 Q. You may state whether you, or any authorized by you as state treasurer, or otherwise, drew that money on behalf of the state treasurer, or yourself?

A. No sir.

267 Q. Looking at the back of Exhibit "C," you may state if the endorsement upon the back of that in the following words: "J. E. Hill, Treasurer, By C. W. Mosher, Treasurer of the Neb.
1386 Relief Fund," was placed on there by your authority, your knowledge, your direction or your consent?

A. It was not.

268 Q. You may state if any portion of the money stated on the face of the certificate, Exhibit "C," was paid to you by the Bank, or to any one for you, as state Treasurer, or otherwise?

A. It was not.

269 Q. Was the endorsement placed on there by you?

A. It was not.

270 Q. Handing you Exhibit "D," which was identified by the preceeding witness, Mr. McDonald, receiver, bearing date July 18, 1891, for $14,650, and Numbered 24937, you may state if that represented an actual transaction between you as state treasurer, or otherwise, and the Capital National Bank?

A. It does not.

271 Q. You may state if you deposited with the Capital National Bank on the date the certificate bears date, July 18, 1891, $14,650, or any portion of it?

A. I did not.

272 Q. You may state if any funds, any amount of money, was ever at any time paid to you as state treasurer, or otherwise, or to any one else for you, in payment of Exhibit "D"?

1387 A. There was not.

273 Q. You may state if you at any time ever endorsed, or authorized any one to endorse, Exhibit "D"?

A. I never endorsed it, and authorized no one to endorse it for me.

274 Q. Is there any endorsement on the back?

A. No, there is no endorsement on the back.

275 Q. I now hand you exhibit "E," which is a certificate drawn for $10,000, bearing number 24941, dated July 20, 1891, payable to J. E. Hill, St. Treas., and will ask you to state whether that represents a transaction between you as state treasurer, or otherwise, with the Capital National Bank of that day?

A. It does not.

276 Q. You may state whether you upon that day, or any other time, deposited the money therein mentioned, or any portion of it?

A. I did not.

277 Q. You may state if on the 6th day of August, 1891, or any other time, the Capital National Bank, or any one for them paid to you, or any one for you, the amount of money, or any portion of the money, mentioned in the Exhibit?

A. They did not.

278 Q. You may state whether that was ever endorsed by you, or any one for you?

A. It was not endorsed by me. There is no endorsement on it.

1388 279 Q. Now handing you certificate of deposit issued by the Capital National Bank for $50,000, bearing date August 17, 1891, payable to the order of J. E. Hill, Treas., bearing number 25097, and identified by the preceeding witness, Mr. McDonald, Receiver, as Exhibit "F," I will ask you to state whether or not you had any transaction of that character at that time?

A. I did not.

280 Q. You may state whether or not you made a deposit of the amount mentioned in that certificate, or any portion of it, at that time or at any other time?

A. I did not.

281 Q. State whether or not on January 6, 1893, or at any other time, there was paid to you, or for you, by the Capital National Bank, or any one for the Bank, the amount specified in this certificate, or any portion of it, as state treasurer or otherwise?

A. There was not.

282 Q. You may state if there is an endorsement upon the back of certificate Exhibit "F"?

A. No sir.

283 Q. I now hand you Exhibit "G," which is a certificate that was identified by the preceeding witness, McDonald, receiver, bearing date August 5, 1891, drawn for $37,975, payable to the

1389 order of J. E. Hill, Treas., bearing number 25047, and will ask you to state if you deposited, or your office deposited, that amount with the Capital National Bank at that time?

A. Yes sir.

284 Q. You may state if the amount of funds, the full amount for which that certificate bears upon its face, was paid to you by the Capital National Bank, or its officers?

A. It was.

285 Q. And the endorsement upon the back of Exhibit "G" is made by who?

A. Made by myself by my deputy, George M. Bartlett.

286 Q. Your authorized deputy?

A. Yes, my authorized deputy.

287 Q. And the full amount mentioned on the face of that certificate was actually paid to the state treasurer in satisfaction of the certificate?

A. It was paid, yes sir.

288 Q. Handing you Exhibit "H," which was identified by the former witness, Mr. McDonald, receiver, being certificate of deposit issued by the Capital National Bank for $50,000, dated November 18, 1891, payable to the order of J. E. Hill, Treas., bearing number 25636, I will ask you to state if you as such treasurer, or otherwise, deposited the amount of money specified in the certificate at that time, or at any other time, or any part thereof?

1390

A. I did not.

289 Q. You may state if you as state treasurer, or otherwise, or any one for you as state treasurer, or otherwise, received from the Capital National Bank, on May 21, 1892, the $50,000 specified in this certificate, or any part of the same?

A. No sir.

290 Q. You may state Mr. Hill, turning to the back of Exhibit "H," if that endorsement, "J. E. Hill, Treas." was written by you, or any of your deputies, or any one authorized by you?

A. It was not written by me, nor did I authorize any person to write it.

291 Q. And neither yourself, nor the state treasurer, received any portion of the funds?

A. They did not.

292 Q. Handing you Exhibit "I," being certificate of deposit issued by the Capital National Bank, dated December 22, 1891, for $37,114.75, payable to the order of J. E. Hill, Treas., and numbered 25862, and being the certificate identified by the preceeding witness, Mr. McDonald, Receiver, you state if you deposited as state treasurer the amount of money mentioned therein upon that date?

1391

A. I did.

293 Q. You may state whether or not the Capital National Bank, on December 13, 1892 paid you the full amount of money specified in Exhibit "I"?

A. They did.

294 Q. And you may state, turning to the back of Exhibit "I," whose endorsement is on the back?

A. That was my endorsement as state treasurer, by my deputy, George M. Bartlett.

295 Q. That is a genuine endorsement?

A. Genuine endorsement, no question about that.

296 Q. Handing you Exhibit "J," which is an exhibit that was identified by the preceeding witness, Mr. McDonald, receiver, which is a certificate of deposit issued by the Capital National Bank for the face value of $38,114.75, bearing date December 22, 1891, payable to the order of J. E. Hill, Treasurer, and bearing number 25861, I will ask you to examine the same, and state if you know whether or not the amount of money specified was deposited by you, or any one for you, as state treasurer, or otherwise, with the Capital National Bank?

1392–1407

A. There was no such amount deposited by me, nor any portion of it, nor for me, nor by me.

297 Q. You may state whether or not you received from the Capital National Bank, or any one representing the Capital National Bank, either by yourself, or otherwise, as state treasurer, or otherwise, the amount of money mentioned in the certificate, or any portion of it, on December 22, 1891, or any other time?

A. I did not.

298 Q. Turning over the certificate, please examine the back, and state whether there is any endorsement on the back of the same?

A. No endorsement appears on the back of it.

299 Q. You may state whether you ever endorsed it or transferred it or authorized any one to do so?

A. I did not.

* * * * * * *

1408–1416 By stipulation of parties the signature to the deposition of John E. Hill is waived.

* * * * * * *

1417 STATE OF ILLINOIS, *County of De Kalb, ss:*

Depositions of sundry witnesses taken before me, Frank Langlois, Jr. a Notary Public within and for the County of De Kalb in the State of Illinois, on the 12th day of May, in the year A. D. 1902, between the hours of nine o'clock A. M. and six o'clock P. M. at the office of Carnes & Dunton, in the Town of Sycamore in said County, pursuant to the annexed notice to be read in evidence in behalf of the plaintiff in an action pending in the District Court of the Fifth Judicial District of Nebraska, in and for Seward County, in which the Jones National Bank of Seward, Nebraska, is plaintiff and Charles W. Mosher, *et al.*, are defendants:

Appearances R. S. Norval, attorney for plaintiff and J. B. Stephens, attorney for defendants;

D. J. CARNES, of lawful age, being by me first duly examined, cautioned and solemnly sworn, as hereinafter certified, deposes, and sayeth, as follows: viz.—

Interrogatory One: State your name, age, residence and occupation.

Answer to interrogatory. My name is D. J. Carnes—age fifty four years, residence, Sycamore, Illinois—occupation, practising lawyer.

Interrogatory Two. State how long you have resided at Sycamore, Illinois.

Answer. Ever since November, 1873.

Interrogatory Three. Are you acquainted with C. W. and W. W. Marsh?

Ans. I am.

Four. How long have you known them?

Ans. Well, ever since I came here to town.

1418 Five. Where have they resided during that period?

Ans. C. W. Marsh has resided all the time in the Township of De Kalb adjoining the Township of Sycamore. W. W. Marsh,

I think, has had his residence here in the City of Sycamore all the time. His home has been here. He has been away portions of the time.

Interrogatory Six. Are you acquainted with the financial standing of C. W. and W. W. Marsh?

Ans. I am.

Seven. And have you been acquainted with their financial standing and property worth since January 1st, 1885 and up to and including the present time?

Ans. I have.

Eight. You may state what relation, if any, you have sustained to C. W. and W. W. Marsh during the time stated in the last preceding interrogatory.

Ans. I was one of their attorneys in troubles following the failure and continued to be so until they were practically through with those troubles. I have been engaged for W. W. Marsh in some matter or matters all the time since then. Have had no professional business to do for C. W. Marsh for some time past.

Nine. You may state, if you know, whether or not the parties above mentioned ever failed in business, and if so, give the date as nearly as you can.

Ans. I know that those parties failed some time in the Summer of 1884, if I remember it. I can't give the exact date without looking at memoranda. The Marsh Binder corporations in which their principal interests were, made an assignment at that time
1419 and that involved the Marsh Harvester Corporation in which they had interests and the firm of C. W. & W. W. Marsh in which name they had other properties and their own individual properties in such a way that they were unable individually or jointly in each of those capacities to pay their debts.

Ten. You may state, if you know, whether or not the firm of C. W. & W. W. Marsh have been solvent and able to pay their indebtedness since January 1885.

—. They have not.

Interrogatory Eleven. You may state if you were acquainted with the Marsh Harvester Company during the time it existed at Sycamore, Illinois.

Ans. I was from the time I came to Sycamore in 1873, and more particularly after I was admitted to the bar in September, 1875. The corporation antedates my acquaintance with it. The Marsh Harvester Company was located at Sycamore, Illinois. Its principal office and manufacturing plant was located here.

Twelve. You may state if you are acquainted with the financial standing and solvency of the Marsh Binder Company from January 1885 up to and including this time.

Ans. I was and am. I am not sure that that was the technical name of the corporation. It was the name it went by.

Thirteen. You may state what you know as to the solvency or insolvency of the Marsh Binder Company within the dates men-
1420 tioned in the preceding interrogatory.

Ans. Well, on January 1st, 1885, that corporation was in

the hands of an assignee under an assignment that had been made under our State Law in the preceding year. I was one of the attorneys for the assignee, and without looking up particular data, I could say that I know the assignee did not realize assets enough to pay in full the preferred claims of the laborers.

Int. Fourteen. Do you know whether or not there were sufficient assets of the firm to pay any portion of the general creditors of the firm or corporation.

Ans. I am positive that there was nothing whatever paid and no assets to pay anything whatever of the general creditors' debts.

Fifteen. Were you acquainted with the Sycamore Marsh Harvester Manufacturing Company located at Sycamore, Illinois?

Ans. Yes sir.

Sixteen. How long did your acquaintance extend?

Ans. That was the original Company that antedates my residence here and was nominally in existence until the assignment of the Binder Company but its business was transferred to the Binder Company. I knew the Company all the time from my first residence here and knew its affairs quite intimately after the time I was admitted to the bar in 1875.

Int. 17. You may, if you know, state whether or not the Marsh Manufacturing Company did any business in the way of manufacturing any machinery or commodities, or articles, after January 1st, 1885.

Ans. It did not.

1421 Int. 18. You may state whether or not you were conversant with the assets, the financial responsibility, of the Sycamore Marsh Harvester Manufacturing Company from January 1st, 1885 up to the present time.

Ans. I was and am.

Int. 19. You may state what it was.

Ans. It has not been a going concern since that time. Has had no asset of value since that time and has been always since that time, unable to pay any debt whatever.

Int. 20. You may state if you are acquainted with the Marsh Binder Manufacturing Company of Sycamore, Illinois.

Ans. I was.

Int. 21. And how long has your acquaintance been with the Company?

Ans. I know that from the time it organized, there was only one corporation that was known here by the name of the Marsh Binder Company. I think its full technical name was the Marsh Binder Manufacturing Company and any answer that I make here responsive to inquiries about the Binder Company refers to that Corporation, by whatever its technical name may be.

Int. 22. You may state how many companies or corporations there were in which the Marshes were interested in the manufacturing of farm machinery at Sycamore, Illinois.

Ans. There was originally the Marsh Harvester Company, as commonly called. Its technical name was, I think, the Marsh Harvester Manufacturing Company. The assets of that Company

were transferred for the most part to the Marsh Binder Com-
1422 pany, as commonly called. Its technical name was, I think, Marsh Binder Manufacturing Company. There was also the firm of C. W. & W. W. Marsh that did some manufacturing on the side, so to speak, in connection with the business of those two corporations.

Int. 24. And then aside from the technical name that you have just given in answer to the preceding interrogatory, there was no other corporations or firms transacting business at Sycamore, Illinois, or manufacturing machinery at this place, other than those you have given in which the Marshes, either C. W. or W. W. were interested.

Ans. Not that I know of. Of course either one of those men may have had some other little interest in some other business here, but nothing of any consequence.

Int. 25. And what do you say as to the solvency or insolvency and the ability of the Marsh Binder Manufacturing Company to pay and discharge its obligations from and since January 1885, up to and including the present time.

Ans. It has been unable to discharge any obligation since the 1st of January, 1885, except, as I have before said, the assignee did work out of the assets after January 1st, 1885, some small amounts of money that were applied on the preferred claims of laborers against the corporation.

Int. 26. And those payments were made under the provisions of your local law?

Ans. They were made under the provisions of our State insolvency law.

Int. 27. You may state if you know whether or not either the firm of C. W. & W. W. Marsh or the individual mem-
1423–1426 bers of the firm, or the Marsh Harvester Manufacturing Company, or the Marsh Binder Manufacturing Company, were, any or either of them possessed of property sufficient to pay their obligations since January 1st, 1885, and up to and including the present time?

Ans. They were not, as I understood it. I would not be able to positively say that in the last two or three years, that C. W. Marsh, for instance, might not have some asset to pay a debt but I know there were executions outstanding, following the failure of 1884, for large amounts that were and so far as I know, always have been uncollected and regarded uncollectible, that were against the property of these several concerns.

Int. 28. You may state if you know, you can approximately, about the amount of indebtedness of which executions have been unsatisfied.

Ans. I could not give figures without looking up documents and records. I know they were large amounts, running up into a good many thousands of dollars.

* * * * * * *

1427 Redirect:

Int. 1. To what failure do you refer in answer to the last cross interrogatory?

Ans. I refer to the time when the Binder Company made an assignment for the benefit of creditors in the Summer of 1884.

Int. 2. You stated that you were acquainted with the firms above mentioned and corporations above mentioned having commercial or farmers' papers as collateral security and that you knew something of its character. You may state what was the character of the paper, if you know, that was used by the C. W. & W. W. Marsh Company, The Sycamore Marsh Harvester Company, and the Marsh Binder Company and given as security which they or one of them owe the parties.

Ans. The commercial paper that these three concerns used here immediately before the failure in securing people, I know considerable about through efforts of myself and others to collect it and my recollection is that parties holding it did not succeed in collecting more than twenty-five or thirty per cent. of the face value of the papers.

Int. 3. You may state if you know anything about the
1428 character of the assets of the C. W. & W. W. Marsh, the Sycamore Marsh Harvester Company and the Marsh Binder Manufacturing Company which were owing by parties in other states and especially in the State of Nebraska.

Int. What time?

Q. During the years 1884 and thereafter.

Ans. I know that the assets of the Marsh Harvester Company by way of the commercial paper, were mostly old for the reason that that Company had gone out of active business some time before that date. They were consequently poor by reason of their age and efforts that had been made to collect out of those assets. I know that the paper of the Marsh Binder Company was most of it given on sale of what we know as the low down Binder and that the machine proved a failure and the payment of the paper was resisted and, therefore, that paper became very poor paper. The paper of C. W. & W. W. Marsh, was, I think, a good part of it, old and my recollection is that it was not any where near as much in amount as the other concerns. I do not recollect distinctly now what they manufactured and such, but I know in a general way that all the paper any and all of those had in the Summer of 1884 was very poor commercial paper.

Int. 4. And do you know of efforts being made to collect the several kinds of papers you have described in the preceding answer?

Ans. Yes sir, I do.

Int. 5. And State what efforts, if any, were made and give results.

Ans. The paper that was turned in as collateral immediately before the failure, went into the hands of various parties here.
1429 Quite a good deal of it went through this office and more of it went through other offices that I was familiar with.

Efforts were first made to collect by sending to Banks, or local collectors, and agents; Then afterwards a good share of that paper was put by various parties here into the hands of a bad debt collector at Rockford and I know that he had a very great amount of it. I have seen his books and lists and was interested in some of it myself. The paper was handled by him for quite a while, efforts made to collect it by having men in the field, securing it or collecting it or doing anything to aid in getting it in better shape and the upshot of all these methods of collection was, as I have said before, to get from twenty five to thirty per cent. of the money on these several kinds on the face value of the paper.

D. J. CARNES.

Subscribed in my presence and sworn to before me this 12th day of May, A. D. 1902.

FRANK LANGLAS, JR.,
[SEAL.] *Notary Public.*

P. M. ALDEN, of lawful age, being by me first duly examined, cautioned and solemnly sworn, as hereinafter certified, deposes and sayeth as follows, viz.—

Int. 1. State your name, age, residence and occupation, and business.

Ans. My name is P. M. Alden—sixty seven years old—residence Sycamore, Illinois—not at present engaged in active business—banker by profession.

Int. 2. State how long you have resided in Sycamore, Illinois.

Ans. Since 1855, with the exception of about four years
1430 in Chicago prior to the time of the fire in 1871.

Int. 3. You may state if you are acquainted and have been acquainted with the firm of C. W. & W. W. Marsh, the Marsh Binder Manufacturing Company and the Sycamore Marsh Harvester Manufacturing Company—Corporations.

Ans. I am well acquainted and have been for the past thirty years at least, or from the time of the incorporation of the said Companies.

Int. 4. Were you acquainted with the above named companies and corporations prior to 1883?

Ans. I was.

Int. 5. You may state what was the business of the firm and companies named, at that time?

Ans. The business of C. W. & W. W. Marsh was mainly in managing and looking after business of the Marsh Binder Manufacturing Company. They had some little outside business of their own in a small manufacturing way but their main business was as managers for the Binder Company.

Int. 6. And what was the business of the Marsh Binder Manufacturing Company and the Sycamore Marsh Harvester Manufacturing Company?

Ans. Manufacturing binders—reapers and binders. They did some other manufacturing of farm implements.

Int. 7. And where were their factories and business located—at what point?

Ans. In Sycamore, Illinois.

Int. 8. Are they still in business?

Ans. They are not.

Int. 9. When did they cease doing manufacturing business?

1431 Ans. It was in June '84. Can't give the date—June '84.

Int. 10. And do you know the occasion of their going out of business?

Ans. I do.

Int. 11. You may state what that occasion was, and how they went out of business.

Ans. Judgments were obtained in the adjoining County for quite a large sum, other claims immediately presented and pressed for collection at that time, and the shops were at once closed.

Int. 12. And in what manner were they closed?

Ans. I think by the levy of the executions in the hands of the sheriff of this County.

Int. 13. Do you know anything about their conveying any property or making any assignment?

Ans. I know they did later on.

Int. 14. About when was that?

Ans. I think within a very few days. I should say the same week.

Int. 15. And since that time do you know whether they have transacted any business, any manufacturing business, or anything of that kind?

Ans. They have not.

Int. 16. Neither as a firm or corporation?

Ans. They have not.

Int. 17. You may state if you was associated in any business in which the Marshes, C. W. & W. W., or either of them, was connected in capacity of banker or otherwise.

Ans. I was.

Int. 18. State your relations with them in that capacity.

1432 Ans. In the years 1872-'73, the Marshes became large stockholders in the Sycamore National Bank of Sycamore, of which bank I was cashier from its opening, for more than twenty years. Both became directors at the time of purchase of stock and so continued until they sold said stock, prior to about 1883.

Int. 19. You may state if you were well acquainted with the financial worth and standing of the firm of C. W. & W. W. Marsh, also of the Marsh Binder Manufacturing Company and the Sycamore Marsh Harvester Manufacturing Company at the time of the failure in 1884.

Ans. I was.

Int. 20. You may state what was their financial condition at that time as to solvency or otherwise, and each of them, in August, 1884.

Ans. They were insolvent.

Int. 21. Each, the firm and corporations?

Ans. Yes sir.

Int. 22. You may state if you know what has been their conditions since that time, since August 1884 and up to and including the month of February, 1893, as to solvency or otherwise.

Ans. They continued to be entirely insolvent.

Int. 23. You may state, if you know, whether or not there was such a Company, either a firm or corporation, as the Marsh Binder Company?

Ans. There was such a Company, so called.

Int. 24. And was the Marsh Binder Company solvent or insolvent?

Ans. Insolvent.

Int. 25. From what time?

1433 Ans. From the time of the failure in June 1884 up to the present time.

Int. 26. You may state if there was such a firm or corporation as the Sycamore Marsh Harvester Company.

Ans. Not to my knowledge, except the one so called.

Int. 27. You may state, if you know, whether or not executions have been returned upon judgments rendered against the firm of C. W. & W. W. Marsh, Sycamore Marsh Harvester Manufacturing Company and the Marsh Binder Manufacturing Company, unsatisfied?

Ans. They have.

Int. 28. You may state, if you know, whether or not the Sycamore Marsh Harvester Manufacturing Company was in business as such in the years 1885-1886-1887-'88-'89-1890-1891-1892-1893.

Ans. It was not.

Int. 29. You may state, if you know, whether or not the firm of C. W. & W. W. Marsh was in business as such in the years 1885-'86-'87-'88-'89-1890-1891-1892 and 1893.

Ans. They were not.

Int. 30. You may state whether or not the Marsh Binder Manufacturing Company was in business at any time from January 1885 up to and including the month of March 1893.

Ans. It was not.

Int. 31. You may state with what Bank, if you know, the firm above named and the Companies and Corporations above named, transacted their business in Sycamore, Illinois, at the time of their failure.

Ans. Yes, I do.

1434 & 1435 Int. 32. Name the bank.

Ans. The Sycamore National Bank.

Int. 33. That was the Bank with which you were then connected?

Ans. It was, yes sir.

Int. 34. And how did you obtain your knowledge as to their financial standing and conditions for the years you have testified? Briefly.

Ans. The Bank made them loans continually and received from outside Banks and parties many items for collection.

* * * * * * *

1436 Redirect:

Int. 1. What knowledge did you have of the collateral papers in the hands of the Capitol National Bank of Lincoln?

Ans. I cannot give the dates but I was there in person some time, a year or two prior to the failure, and with Mr. Mosher, and the cashier I was shown a large amount of the paper.

Int. 2. How long was that before the failure of C. W. & W. W. Marsh, the Sycamore Marsh Harvester Manufacturing Company and the Marsh Binder Manufacturing Company?

Ans. As I have stated, I cannot give the exact date. I would say two years prior to that time.

Int. 3. Then you have no knowledge of whether or not the Capitol National Bank held any paper as collateral to the indebtedness of C. W. & W. W. Marsh and the several Binder and Harvester Companies at the time of the failure in 1884?

Ans. Only as I am informed they had some.

Int. 4. And you have no knowledge—personal knowledge—of their holding any collateral for any indebtedness of C. W. & W. W. Marsh, the Sycamore Marsh Harvester Manufacturing Company and the Marsh Binder Manufacturing Company in the years 1885 '86-'87-'88-'89-'90-'91-'92 and '93?

Ans. I have not.

Int. 5. Do you know whether or not any sum was realized out of the collaterals which you say was held by the Capitol National Bank against the several Marsh Companies at the time you were there some two years before the failure of the Marsh Companies here

1436½ in 1884?

Ans. I have not. I do not know that anything was collected.

Int. 6. Do you know, or did you know the value of the collateral that was put up with the Capitol National Bank of Lincoln, Nebraska, prior to the failure of the several Marsh Companies of Sycamore, prior to 1884?

Ans. Judging from subsequent events, I would think the papers were not worth over twenty-five cents on the dollar.

Int. 7. And you have no knowledge of any collateral given by any of the Marsh Companies above named to the Capitol National Bank for indebtedness which was made and incurred after the failure of the Marsh Companies at Sycamore in 1884?

Ans. I have not.

Int. 8. You may state, if you know, whether or not the notes which you say were in the Capitol National Bank at Lincoln, Nebraska, were there as collateral or were they being collected upon the account of Marsh Brothers, Mosher & Company?

Ans. They were there as I understood it and was told, both for collection and collateral for debts, to the Bank as I understood it.

Int. 9. And do you know that the proceeds were paid when collected upon the indebtedness of the several Marsh Companies?

Ans. I know nothing whatever as to that matter.

Int. 10. You have never examined any of the collateral notes

which you say you saw there some two years before the failure of the several Marsh Companies, which would be in the year, about 1882, since the failure of the Marshes?

1437–1440 Ans. I would say not to my knowledge. I do not know that I did.

Int. 11. Do you know anything of your own knowledge as to whether or not the assignee of the Marsh Binder Manufacturing Company attempted to collect the notes owned by the Company after the assignment?

Ans. I understood from him that he was attempting to collect them.

Int. 12. Do you know how he succeeded?

Ans. I do.

Int. 13. What was the result of his efforts?

Ans. Very little was collected.

Int. 14. Do you know whether or not any of the general creditors of the firm or Company was paid anything under the assignment.

Ans. They were not paid.

Int. 15. You may state if you know whether there was sufficient money to pay the preferred creditors, under the laws of the State of Illinois, which were the laborers?

Ans. There was not enough for that.

P. M. ALDEN.

Subscribed in my presence and sworn to before me this 12th day of May, A. D. 1902.

FRANK LANGLAS, Jr.,
Notary Public.

[SEAL.]

* * * * * * *

1441–1451 JOHN W. MCDONALD, of lawful age, being by me first duly examined, cautioned and solemnly sworn, as hereinafter certified, deposeth and sayeth as follows—

Q. You may state your name and place of residence?

A. John W. McDonald; Lincoln, Nebraska.

Q. You are receiver of the Capital National Bank of Lincoln, Nebraska?

A. Yes sir.

Q. How long have you been receiver of that Bank?

A. Well, most four years, as I remember it; I think in the summer of 1898 I was appointed receiver.

Q. As such receiver you have in your possession and under your charge the books, documents, and papers of the Capital National Bank?

A. Yes.

* * * * * * *

1452 Q. You may produce "Record Book" Number "1" of the Receiver of the Capital National Bank?

A. I produce it.

Mr. THOMAS: The notary will identify that as Exhibit "65."
(Book so identified.)

Q. You may produce "Cash Book" Number "1" of the Receiver of the Capital National Bank?
A. I produce it.

Mr. THOMAS: The notary will identify that as Exhibit "66."
(Book so identified.)

Q. You may produce Ledger Number 1 of the Receiver of the Capital National Bank?
A. Here it is.

1453 Mr. THOMAS: The notary will identify that as Exhibit "67."
(Book so identified.)

Q. These books you have produced, except the last three, are all books of the Capital National Bank in your hands as receiver?
A. Yes, they all came into my hands as receiver of the Capital National Bank.
Q. I will ask you if you have in your possession as receiver of the Capital National Bank, and as a part of the nominal assets of that Bank, notes executed by the Western Manufacturing Company to the Capital National Bank?
A. I have twenty-four notes of $5000 each, and two of $2500 each, made by the Western Manufacturing Company.
Q. How are each of those notes signed?
A. Signed by the Western Manufacturing Company by E. Hurlbut Jr., Manager, except in one case, where there is a copy of the note, the original haveing been lost, and judgment for receiver's certificate having been allowed by the court; all of the rest are original notes.
1454 Q. Do you know the signature to those notes?
A. Yes, I think I know Mr. Hurlbut's signature.
Q. Are those notes signed in his hand writing?
A. Yes, I think they are.
Q. Do the notes bear any endorsement?
A. They all have endorsements.
Q. Do you know the hand writing of the endorser?
A. Many of them have more than one endorsement.
Q. You may state whether or not they bear the endorsement of C. W. Mosher as President?
A. All but two of them bear the endorsement of C. W. Mosher President.
Q. Are you acquainted with the signature of C. W. Mosher?
A. Yes, fairly so. It has been a long while since I have seen it,—a long while since I saw him write it,—but I think I know his signature fairly well.
Q. Are those notes you have referred to a part of the assets of the Capital National Bank now in your hands?
A. Yes sir.

Q. Were those notes a part of the assets of the Capital National Bank at the time of its suspension January 21, 1893?

1455 A. Yes.

Q. Have those notes been placed in judgment by the receiver of the Capital National Bank?

A. I cannot tell you without looking up the records.

Q. Has the receiver attempted to collect them?

A. I have not.

Q. If not, why not?

A. Because there is no one to collect them from. All efforts were exhausted by the former receivers to collect these notes.

Q. You may explain more fully what you mean by "no one to collect them from"?

A. I never was able to discover that the Western Manufacturing Company had any assets of any kind.

Q. Do you know of such a Company being in existence?

A. There was a Company that bore that name, but I never understood that they had anything.

Q. Who, if any one, constituted the Company, if you know?

A. I don't know.

1456 Q. The Company that bore that name, where did it do business?

A. I think in Lincoln.

Q. Where was its principal place of business?

A. I think in Lincoln.

Q. At what place of business in Lincoln?

A. Of my own knowledge I do not know. I only know by repute, that is all.

Q. What do you know by repute?

A. Well, I always understood it was one of Mosher's companies.

Q. Was there another Western Manufacturing Company that was regularly incorporated, of which M. D. Welch was an officer, or manager?

A. Yes, I think there was.

Q. That was not the Company that executed these notes you have in your possession?

A. I think that was not the same Company.

Q. You have made inquiry to ascertain if it were, have you, in your effort to ascertain whether these notes were collectible?

1457 A. I think I said the former receivers exhausted their resources in trying to collect these notes, and I have never given them any attention at all. I understood them to be worthless.

Q. Have you satisfied yourself that they are worthless?

A. Yes.

Q. Utterly worthless?

A. Yes sir, and always were, that is my understanding.

Q. Do you know that the former receivers exhausted all remedies to collect these notes?

A. Yes, I am very sure they did.

Q. This Company purporting to bear the name Western Manufac-

turing Company, which executed these notes, signed by E. Hurlbut, Jr., Manager, was never in fact incorporated?

A. Yes, I think that was the case.

Q. And so far as you were able to ascertain or learn, never had any assets?

1458–1462 A. So far as I have been able to ascertain, none.

Q. And their paper and notes were never of any value?

A. No, never of any value.

Q. You may state, if you know, whether these notes you have produced were ever sold or discounted by the Capital National Bank to anyone?

A. They were rediscounted.

* * * * * * *

1463 MAY 15, 1902—9 a. m.

Direct examination of JOHN W. MCDONALD continued:

Q. In your testimony yesterday you referred to notes of the Western Manufacturing Company signed by E. Hurlbut Jr., Manager, given to the Capital National Bank, consisting of twenty-four notes for $5000 each, and two notes for $2500 each, three of which were identified as Exhibits 68, 69, and 70. I now hand the remaining twenty-three notes to the reporter and ask that they be identified as Exhibits commencing with Number 71, and to be numbered consecutively up to and including Number 93.

(Notes so identified.)

Q. I now hand you Exhibits Numbered from 68 to 93, inclusive, except Exhibit 86, being the notes of the Western Manufacturing Company to which you testified yesterday, and ask you if you are acquainted with the signature of the maker attached to each of those notes?

A. Yes, I think I know the signature.

Q. Whose signature is it?

A. I think it is the signature of E. Hurlbut Jr.

Q. In what capacity, if any?

A. It is signed Manager.

1464 Q. Manager of what?

A. The notes are signed Western Manufacturing Company, E. Hurlbut Jr. Mgr.

Q. You may state if these notes were executed to and taken into as a part of the assets of the Capital National Bank during its existence?

A. The books of the Bank show that they were assets of the Capital National Bank.

Q. By the Books of the Bank, you mean the books of the Capital National Bank which are in your hands as receiver?

A. Yes.

Q. And these notes just referred to were taken in by the Bank, and carried by the Bank during its existence as a part of its assets?

A. Yes.

Q. And these notes above referred to, and now in your hands, are in your possession as Receiver of the Capital National Bank?

1465 A. They are in my hands as trustee.

Q. You may state fully what you mean by that?

A. The notes were rediscounted by the Capital National Bank, and they were turned back to the receiver to be collected by him, if possible, the receiver issuing certificates for the amount of the notes to their respective owners.

Q. Is the same true of Exhibit Number 86, where the original note has been lost?

A. Yes.

Q. And receiver's certificate has been issued for that note in the sum of $5000?

A. Yes.

Q. Being receiver's certificate Number 1094?

A. Yes.

Q. These notes identified as Exhibits 68 to 93, inclusive

1466 were sold by the Capital National Bank prior to its suspension, did you state?

A. Yes.

Q. Were these notes endorsed?

A. Yes.

Q. You may state if you are acquainted with the signature of the endorsement on each of the notes identified as Exhibits 68 to 93, inclusive?

A. Yes, I think so.

* * * * * * *

Q. These notes identified as Exhibits 68 to 93, inclusive had been sold, and were owned by parties other than the Capital National Bank at the time of its suspension and failure?

1467–1470 A. Yes.

* * * * * * *

1471 Q. Have these notes been allowed by the receiver as claims against the Capital National Bank?

A. Yes.

Q. For what amounts?

A. Exhibits from Number 68 to 91 inclusive are for $5000 each, and 92 and 93 are for $2500 each.

Q. These notes referred to have been allowed for these amounts by the receiver, and have certificates been issued by the receiver for those various amounts?

1472 A. Yes.

* * * * * * *

1473 Q. Are you able to state what items of the Capital National Bank's assets came into the hands of the receiver following its suspension?

A. Yes.

Q. Are you able to state what amounts have been realized by the receiver from these assets of the Capital National Bank?

A. Yes.

Q. Are you able to state the amount of the liabilities against the Capital National Bank allowed by the receiver?

A. Yes.

Q. Are you able to state the amount of dividends that have been paid by the receiver to the creditors of the Capital National Bank on their several claims?

—. Yes.

Q. I will ask you to state what amount of assets
1474–1483 came into the hands of the receiver of the Capital National Bank classed under the head of "Cash Items"?

A. I would have to refer to the ledger to answer that. I cannot keep those figures in my head.

Q. You may refer to the ledger?

* * * * * * *

1484 THOMAS: I now repeat my original question, and ask you to state from an inspection of the books referred to what amount of assets came into the hands of the receiver classed as cash items on the books?

A. Do you want the aggregate, or do you want it in its two classifications?

Q. You may give it in its two classifications.

A. Cash items, good, $12,531.27; cash items, worthless, $799.41.

Q. Now you may state, if you know, the amount of cash of the Capital National Bank that came into the hands of the receiver at the time of the suspension of the bank, or following the suspension of the Bank; that is, at the time the receiver took possession of the assets?

1485 A. $15,385.87.

Q. You may state, if you know, the amount of assets that came into the hands of the receiver immediately following the suspension of the Bank, classed as "overdrafts."

A. Doubtful, $17,834.63; worthless, $15,932.57.

Q. Total, how much?

A. $33,767.20.

Q. You may state, if you know, the amount of assets that came into the hands of the receiver of the Bank indicated on the books as bills of exchange?

A. Good, $3484.94. Doubtful, $1456.08; worthless, $56.95; total, $4997.97.

Q. You may state, if you know, the amount of assets that came into the hands of the receiver of the Bank indicated on the books as furniture and fixtures?

1486 A. $300.

Q. You may state the amount of assets which came into the hands of the receiver of the Bank classed on the books as stocks and bonds?

A. $325.

Further hearing adjourned until 2 P. M., May 15, 1902.

Witness McDONALD, Continued.

Q. You may state the amount of assets that came into the hands of the receiver of the bank classed as excess bonds?

A. $5000.

Q. You may state the amount of assets that came into the hands of the receiver of the Capital National Bank which consisted of bills receivable, or notes?

DEWEESE: Let me inquire what book are you examining to ascertain that?

A. I am examining the records, the receiver's record.

Q. Receiver's books?

A. Yes sir.

1487 A. The good are $298,325.39; doubtful, $155,560.84; worthless $397,073.63; total, $850,959.86.

Q. In this amount is there included bills receivable or notes which had been rediscounted or sold, and which were merely held by the receiver as trustees for the various holders of the discounted paper?

A. All the rediscounted paper is included.

Q. Now you may state how much rediscounted or sold bills receivable was included in the sum of $298,325.39, to which you have testified?

A. $187,270.56.

Q. You may state how much rediscounted or sold bills receivable is included in the sum of $155,560.84, to which you have testified?

A. $29,375.14.

Q. You may state how much bills receivable or notes rediscounted or sold are included in the sum of $397,073.63, to which

1488–1491 you have testified?

A. $114,714.16.

Q. Have you computed the total of rediscounted or sold notes?

A. $331,359.86.

* * * * * * *

1492 Q. I think that answers that. Now you may state what assets were required by the receiver after the suspension of the Bank?

1493 A. Doubtful, $11,510.49; worthless, $19,428.91; good, $27,972.04; making a total of $58,911.44.

Q. Is there anything under this head classed as real estate?

A. Yes.

Q. You may state how much assets the receiver has received under this head?

A. $86,975.

Q. You may state if the receiver has come into possession of any assets that accrued after the failure of the bank and its suspension?

A. Yes.

Q. You may state, if you know the amount?

A. $11,065.75.

Q. From what source was that received?

A. Oh, well, that was from various items, rent and interest; oh, no, this is rent. I have another account,——

Q. It consists of rent derived from real estate accruing after the failure of the Bank?

A. Yes.

Q. What other account have you under this head?

1494 A. Interest account.

Q. You may state, if you know, how much was realized from that source?

A. $10,498.93.

Q. That was realized on interest accruing after the failure of the Bank was it not?

A. Yes.

Q. You may state Mr. McDonald if anything was realized by the receivers from any other sources?

A. Stock assessments.

Q. You may state, if you know, how much was realized from stock assessments?

A. $155,598.20.

Q. You may state what that consisted of, and how it was obtained?

A. An assessment of 100 per cent. was levied on the stock.

Q. By whom was that levied?

A. By the comptroller, and that much was paid.

Q. What was the purpose of the assessment?

A. To make up the deficiency in the assets.

Q. Who made that assessment necessary?

1495 A. Because the law required it under the showing, I suppose.

Q. Under what showing?

A. They make up as soon as possible after the failure of a bank, as soon as the receiver becomes familiar with the assets, he makes an estimate of their value, and on that the assessment is made, if any. I presume it was so done in this case, but I don't know.

Q. After the receiver takes charge of the assets, if it is found that the assets are not sufficient to pay the liabilities, an assessment is made on the stockholders?

A. Yes sir.

Q. Now the amounts, referring to the assets on hand at suspension, to which you have testified, were the nominal value of those assets at that time, and not the actual value; state whether or not that is correct?

A. I have no knowledge of that at all. I was just telling you the custom that prevailed with failed banks. This deficiency statement was made up long before the time I had any connection with it, and I presume,——

1496 Q. You stated in your examination this morning you knew how much had been actually realized from the various assets of the Bank; I will now ask you to state, if you know, what was realized in cash by the receiver upon assets known as "other than bills receivable"?

A. From "other assets," which is the term used in our reports, there has been collected the sum of $33091.31.

Q. You may state what items comprise this sum of $33,091.31?

A. Cash, $15,385.87; furniture and fixtures, $300; stocks and bonds $325; excess of bonds, $3250; Cash items, $4280.85; Bills of exchange, $4778.02, overdrafts $4771.57 (L. A. R. N. P.)

Q. Now you may state, if you know, what was realized by the receivers from bills receivable or notes of the Capital National Bank?

A. $229,520.82.

Q. Can you give the items comprising that amount?

A. Well, what do you mean, under what classification they are, and whether good or not.

Q. Yes.

1497 A. Yes, I guess I can. $210,462.07, good.

Q. Of this amount of $229,520.82, which you say is the total received from bills receivable, you may state how much of that, if any, was collected for bills rediscounted, or notes that had been sold to other parties, and which were collected by the receiver merely as trustee for the various holders?

A. I could not tell that without going over the account in my ledger under the head of "loans paid and other disbursements," and picking out all of those items.

(Witness goes over account.)

Q. If you have gone over that account, as stated, you may give the necessary information?

A. I find that loans paid and other disbursements account shows that there was paid for rediscounted paper collected $188,020.56, which being deducted from the sum of $229,520.82 would give the amount realized on bills receivable belonging to the Bank.

Q. Now you may state, if you know, how much was collected and realized by the receiver on account of "assets acquired after suspension"?

1498 A. $105,902.95.

Q. Now you may state how much, if any, of this was realized from rents which accrued during the receivership?

A. Not any of it.

Q. That consisted of assets classed on the books as "other assets, both good, doubtful, and worthless"?

A. Yes sir.

Q. Now you may state how much was received by the receiver on account of rents which accrued after the suspension of the bank and during the existence of the receivership?

A. From premium, interest, rents, $20,299.56.

Q. The portion of this which comprises interest refers to interest which accrued after suspension?

A. Interest collected after suspension. I think it is possible that a little of it may have accrued prior to suspension.

Q. Can you give the items of rents and interest separately?

A. Yes, I think so. I find I am mistaken, that I gave the wrong amount. It is $21,564.68.

Q. And are there any deductions there for offsets?

A. The amount should be $21,549.56.

Q. Was any of that for premium on bonds?

A. No, that is just a name given the account, it is all for interest and rents.

1499 Q. Accruing after suspension?

A. Well, mostly. I s-ould not like to say that a small amount of interest might not have accrued prior to suspension.

Q. Substantially?

A. Yes.

Q. How much was realized by the receiver on account of assessments which were levied on stockholders, as referred to in a former portion of your testimony, in accordance with the order of the comptroller?

A. $155,598.20.

Q. Now is that all the moneys that have been received by the receivers from the assets of the Capital National Bank and the assessment on the stockholders since its failure on January 21, 1893 to this date?

A. Yes.

Q. Out of this amount, what disbursements have been made by the receivers, if you know?

A. Loans paid and other disbursements, $59,764.59.

Q. Now you may state what was the nature of these disbursements, what they were for?

1500 A. Into that account is charged all moneys paid out for the betterment of the assets. No expenses are charged in that account. Where taxes are paid, or repairs made to the property, or a loan on a property is paid off: anything that betters the asset goes into that account.

Q. It does not include any general liability of the bank filed as a claim with the receiver?

A. No.

Q. What other items of expenditures or disbursements have been made by the receiver?

A. I have paid out in dividends $211,300.93.

Q. That is the total amount of dividends that have been paid to the creditors of the Capital National Bank up to date?

A. Yes sir.

Q. What other disbursements have been made by the receiver?

A. Legal expenses, $49,616.33.

Q. What other amounts?

A. Receiver's salary, $20,985.

Q. Any other expenses, if so state?

A. Under the head of other expenses has been paid $12,774.41.

Q. Are those all of the disbursements that have been made

1501 by the several receivers?

A. Yes sir.

Q. You may state how much, if anything, is on hand in your hands, or with the Comptroller of the Currency, belonging to the assets of the Capital National Bank?

A. $3261.02.

Q. You may state if you know what are the amounts of the

various liabilities that have been allowed against the Capital National Bank?

A. Yes, I do.

Q. You may state what were the liabilities of the Capital National Bank at the time of its failure to various national banks as allowed by the receiver?

A. $47,759.56.

Q. You may state what was the amount of the liabilities of the Capital National Bank at the time of its failure to various state banks, and which amounts were allowed by the receivers and receivers' certificates issued therefor?

1502 A. $114,349.62.

Q. The item to which you referred previous to this comprising $47,759.56, this has been allowed by the receiver, and receiver's certificate issued therefor?

A. Yes.

Q. You may state what were the liabilities of the Capital National Bank at the time of its failure on account of individual deposits which were allowed by the receivers and receivers' certificates issued therefor.

A. $392,639.64.

Q. You may state what were the liabilities of the Capital National Bank at the time of its failure on account of certificates of deposit outstanding and for which claims were allowed and receivers' certificates issued therefor?

A. $517,999.49.

Q. Now you may state what were the liabilities of the Cap-

1503 ital National Bank at the time of its failure for bills receivable or notes which had been sold, endorsed, and guaranteed, which were allowed by the receiver as claims against the bank and receiver's certificates issued therefor?

A. $331,359.86.

Q. Now you may state if there were any other claims that the Bank was owing at the time of its suspension that were presented to the receiver, allowed by him, and receiver's certificates issued therefor, and if so state the nature of the claims and the amount allowed?

A. I know the total number of certificates allowed, the total number issued. When you divide it up the way you have here it becomes confusing.

Q. Consisting of what?

A. Also an item of $5500, and one of $954; claims in dispute $13,290.94.

Q. Is that all the liabilities, excepting the capital stock, Mr. McDonald?

A. Yes, I think so.

1504 Q. And the capital stock was how much, at the time of its failure?

A. $300,000.

* * * * * * *

Q. I will now ask you to produce the following books, namely:—Journal of Marsh Brothers, Mosher & Company; Bills Discount

register of Marsh Brothers Mosher & Company; Bills discounted Register of the Marsh National Bank; Bills discounted Register Number "1" or "A" of the Capital National Bank; Certifi-
1505 cate of deposit register of the Capital National Bank, including record of certificates from Number 1 to 16249, inclusive; certificate of deposit register of the Capital National Bank including certificates of deposit from 26305 to 28412, inclusive; Journal of the Capital National Bank, including and containing entries of the Capital National Bank from January 1, 1889 to April 1, 1890; interest book, containing items of interest received by the Capital National Bank from January 1st, 1887, to July 1st, 1888; book of the Capital National Bank containing all entries and items for interest paid by the Capital National Bank during the entire period of its existence; teller's book of the Capital National Bank of bills discounted for the year 1886?

A. I am not able to find any of these books.

Q. Have you made a search for those books, Mr. McDonald?

A. Yes.

Q. Diligent search?

A. Yes.

Q. And you are certain they cannot be found?

A. I am certain I have not been able to find them after diligent search.

Q. Do you know if any of those books were among the books of the receiver at the time you took charge of the receivership, and possession of its books?

A. No sir, I don't know anything about it. I never saw any of them.

Q. You have no recollection of ever having seen any of those books?

A. No sir.

1506 & 1507 Q. Do you think further search for the books would avail anything?

A. No sir.

* * * * * * *

1508 Q. Now you may state what bills receivable, if any, came into the hands of the receiver as assets of the Capital National Bank at the time of its failure of Charles W. Mosher, its president?

A. $85,281.67.

Q. Have you succeeded in collecting anything on those notes?

A. No.

Q. They still remain in your hands unpaid and uncollectible?

A. Yes.

Q. You may state what notes of Edwin W. Mosher, or
1509 E. W. Mosher, if any, came into the hands of the receiver as assets of the Capital National Bank at the time of its failure?

A. $107,085.45.

Q. Are those notes still in your possession as receiver?

A. Yes.

Q. Has any part of those notes, any portion of them been collected?

A. Yes.

Q. How much?

A. On one note, on note numbered 134007, for $12,730.01, there has been $9426.60 paid.

Q. When was that paid, and by whom?

A. Well, that was paid in April, 1893 from the sale of horses.

Q. Was that note secured by a mortgage on horses, which was foreclosed and the proceeds applied on this note?

A. Yes, I believe so.

Q. Is that all that has been realized on any of those notes of Edwin W. or E. W. Mosher?

A. Yes.

Q. You may state what notes of R. C. Outcalt, or Richard C. Outcalt, if any, came into the hands of the receiver as assets of the Capital National Bank at the time of its failure?

1510 A. $54,166.66.

Q. Are those notes still in your possession as receiver?

A. No, they are not.

Q. Do you know where they are?

A. Why, they were turned over to attorneys in trust for collection.

Q. They are still in your control as receiver, and part of the nominal assets of the Capital National Bank?

A. Yes, what I meant was that the original notes are not in my hands.

Q. Has any portion of those notes been collected?

A. On one note there has been an offset of $570.99.

Q. What note is that?

A. Note of $6240.

Q. Have any portion of those notes been collected?

A. No.

Q. You may state what notes, if any, of W. H. Barstow came into the hands of the receiver as assets of the Capital National Bank at the time of its failure?

A. I can't find but $2,788.75, that is all the records show.

1511 Q. You may state the number and amounts of the notes you find on your record that were executed by Mr. Barstow?

A. No. 46653, $1508.00; No. 116078, $50; No. 116078, $100; No. 1199, $1130.75.

Q. Is that all you find?

A. Yes, that is all.

Q. If there were any more that were held by the bank at the time of its suspension, they have not come into your possession?

A. That is all the books show.

Q. Are those you speak of now in your possession or under your control as receiver?

A. All but one of them, one for $1508 has been paid.

Q. Have any of the rest of the notes of Mr. Barstow been paid?

A. On note of $1130.75 there was payment April 8, 1893 of $162.08.

Q. By whom were these payments made?
A. Well, I don't know; that was before my time. I suppose they were made by Mr. Barstow.
Q. Do you know if there was any security for these notes?
A. Well, the records show that these payments were made from proceeds of the sale of horses.
Q. You may state what notes, if any, signed by Mosher and Outcalt came into the hands of the receiver as assets of the Capital National Bank at the time of its failure?
A. $5635.
Q. Is that note in your possession or under your control
1512 as receiver??
A. Yes.
Q. Has any part of that note been paid?
A. No.
Q. State what notes, or bills receivable, if any, of W. T. Scott came into the hands of the receiver as assets of the Capital National Bank at the time of its failure?
A. I don't find any such notes.
Q. Do you find some with another initial? Do you find any notes that came into the hands of the receiver as assets of the Capital National Bank executed by Mary C. Scott?
A. Yes.
Q. What is the amount of those notes?
A. $13,000.
Q. Are those notes in your possession or under your control as receiver of the Capital National Bank?
A. Yes.
Q. Has any part of them been collected?
A. No.
Q. You may state what notes, if any, signed by W. A. Sharar came into the hands of the receiver as assets of the Capital National Bank at the time of its failure?
1513 A. $7153.76.
Q. Are those notes now in your possession or under your control as receiver of the Capital National Bank?
A. Yes.
Q. Have you been able to collect any portion of them?
A. No.
Q. You may state what notes, if any, of C. E. Turk came into the hands of the receiver as part of the assets of the Capital National Bank at the time of its failure?
A. $7289.10.
Q. Is that note in your possession or under your control as receiver of the Capital National Bank?
A. Yes.
Q. Have you been able to collect any portion of it?
A. No.
Q. You may state what note, if any, of the Sycamore Marsh Harvester Company came into the hands of the Receiver as a portion of the assets of the Capital National Bank at the time of its failure?

A. $4500.

Q. Is that note in your possession or under your control as receiver of the Capital National Bank?

A. Yes.

1514 Q. Has any part of it been collected?

A. No.

Q. You may state if the note of Marsh & Hinds came into the possession of the receiver of the Capital National Bank as a part of the assets of the bank at the time of its failure?

A. $1000.

Q. Is that in your possession as receiver as a part of its assets?

A. Yes.

Q. Has any part of it been collected?

A. No.

Q. You may state what notes, if any, signed by the Marshes, C. W. and W. W. Marsh, came into the hands of the receiver as a portion of the assets of the Capital National Bank at the time of its failure?

A. I find one note of $3600 signed by C. W. and W. W. Marsh; one note of $9000 signed by Marsh Binder Manufacturing Company; and one note for $200 signed by James Marsh.

Q. Are those notes in your possession as receiver of the Capital National Bank, and a part of its assets?

1515 A. Yes.

Q. Has any part of them been collected?

A. No.

Q. You may state what note, if any, of the Southern Stave & Lumber Company came into the possession of the receiver as a portion of the assets of the Capital National Bank at the time of its failure?

A. $5346.15, that was a rediscount note.

Q. Was that note filed with the receiver as a claim against the Capital National Bank, and allowed?

A. Yes.

Q. And receiver's certificate issued therefor?

A. Yes.

Q. Have you collected any portion of that note?

A. No.

Q. Among the assets of the Capital National Bank which came into the hands of the receiver, was there an item consisting of overdrafts of the bank at the time of its suspension?

A. Yes.

1516 Q. You may state if among those items of overdrafts there was one of C. W. Mosher, president of the bank?

A. Yes.

Q. For what amount?

A. $2927.59.

Q. Was there one of Mosher & Outcalt, the president and cashier of the bank?

A. Yes.

Q. For what amount?

A. $8983.36.
Q. Was there one of J. E. Hurlbut Jr.?
A. Yes.
Q. For what amount?
A. $1756.09.
Q. Was there one of the Western Manufacturing Company, of which Hurlbut was manager?
A. Yes.
1517 *A. Yes.*
Q. What amount?
A. $1361.79.
Q. Was there one of Stark & Mosher?
A. Yes.
Q. For what amount?
A. $1691.84.
Q. Are these items of overdraft still in your possession as a nominal asset of the Capital National Bank?
A. Yes.
Q. Has any portion of them been collected?
A. No.
Q. Now, Mr. McDonald, have you endeavored to convert into money collect, and realize upon all of the assets of the Capital National Bank?
A. Yes.
1518 Q. And have you used your best efforts, and exhausted all means to collect something on them?
A. Yes.
Q. Would it be possible to collect any more, or realize any more upon any of the assets of the Capital National Bank than has been realized upon them up to this date?
A. I think it is doubtful, but I would not like to say it would not be possible.
Q. In your opinion, do you think anything more can be realized on any of the remaining assets of the Capital National Bank?
A. I think a little can be realized.
Q. About how much?
A. Oh, I don't know, I never figured it up. I think the assets would sell for a little something at public sale; that they would pay a little something to get these judgments out of the way.
Q. A nominal amount?
1519 & 1520 A. Yes, I presume so.
Q. Since you have been receiver you have endeavored to realize on all of the assets of the Capital National Bank?
A. Yes.
Q. Are the remaining assets of the Capital National Bank valuable, or not valuable, excepting what may be realized upon them at public sale?
A. Oh, I think they have very little value?

* * * * * * *

1521 Q. You may state, if you know, the amount of money which the Bank of Staplehurst, Nebraska had on deposit in the Capital National Bank at the time of its failure?

A. $14,264.11.

1522 Q. State if the amount of that deposit was allowed by the receiver of the Capital National Bank, and a receiver's certificate issued to the Bank of Staplehurst therefor?

A. Yes.

Q. You may state the amount of money that the Jones National Bank of Seward, Nebraska, had on deposit in the Capital National Bank at the time of its failure?

A. $17,529.23.

Q. You may state if the amount of that deposit was allowed by the receiver of the Capital National Bank and a receiver's certificate issued therefor?

A. Yes.

Q. You may state if you know, the amount of money, if any, that the Utica Bank of Utica, Nebraska had on deposit in the Capital National Bank at the time of its failure?

A. $7497.17.

1523 Q. State if the amount of that deposit was allowed by the receiver, and receiver's certificate issued therefor?

A. Yes.

Q. You may state, if you know, the amount of money that Thomas Bailey had on deposit in the Capital National Bank at the time of its failure?

A. $11,500.

Q. State if the amount of that deposit was allowed by the receiver and receiver's certificate issued therefor?

Q. You may state, if you know, the amount of money that Isaac Holt had on deposit in the Capital National Bank at the time of its failure?

A. $5000.

Q. State if the amount of that deposit was allowed by the receiver and receiver's certificate issued therefor?

1524–1539 A. Yes.

Q. You may state what dividend has been paid on these claims by the receiver out of the assets of the bank?

A. Seventeen per cent.

Q. One dividend of ten per cent., one of five per cent., and one of two per cent.?

A. Yes.

* * * * * * *

1540 Witness McDONALD recalled by plaintiff.

Examined by Mr. THOMAS:

Q. You have in your possession certificates of deposit of the Capital National Bank which have been identified by the Notary as Exhibits from 147 to 923½, inclusive?

A. Yes sir.

Q. Are those certificates of the Capital National Bank outstanding and unpaid at the time of its failure?
A. Yes.
Q. Were those certificates filed with the receiver?
A. Yes.
Q. And you may state if the amount called for by each of those certificates was allowed by the receiver?
A. Yes.
Q. Was a receiver's certificate issued representing the amount called for in each of those certificates you have identified?
A. Yes.
Q. Have the certificates referred to as Exhibits 147 to 923½, inclusive been compared with the receiver's records to
1541–1583 ascertain whether they agree with the amounts shown by the books of the receiver as having been allowed on the certificates?
A. Yes.
Q. And have the amounts specified in each of those certificates and for which they were issued, been allowed by the receiver as a claim or charge against the Capital National Bank?
A. Yes.
Q. Referring to the value of the remaining assets in your hands belonging to the Capital National Bank, you may state if, since your testimony yesterday, an order has been made by the department, ordering the remaining assets of the Capital National Bank to be sold?
A. No.
Q. There has been no such order?
A. No.
Q. Do you know if the assets are to be sold?
A. I recom-ended that they be sold.
Q. You have recommended that the assets remaining in your hands as receiver of the Capital National Bank be sold at public sale?
A. Yes.

1584 MAY 16—two o'clock p. m.

RICHARD C. OUTCALT, being by me first duly examined, cautioned and solemnly sworn, as hereinafter certified, deposeth and sayeth as follows, viz:—

Q. You may state your name and place of residence?
A. Richard C. Outcalt, Lincoln, Nebraska.
Q. How long have you resided in Lincoln, Mr. Outcalt?
A. Thirty-one years.
Q. What has been your occupation during that time?
A. I was in the bank from 1870 to '93.
Q. You may state what Bank?
A. James Sweet & Brock,——
Q. How long were you with that firm?
A. I could not tell you. State Bank of Nebraska; State Bank;

Marsh Brothers Mosher & Company; Marsh National Bank; and Capital National Bank. You can divide the time up to suit yourself.

Q. Then continuously from 1870 to 1893 you were in the banking business?

A. Yes sir.

Q. Did the Capital National Bank fail, and if so, when?

A. January, 1893.

Q. Do you know what day in January it suspended?

A. No, I don't.

Q. Calling yo-r attention to the date, was it January 21st?

A. It was the 21st or 23rd, somewhere along there.

Q. Now when was the Capital National Bank organized?

A. I am not sure, in 1883 or 1884.

1585 Q. Did it always bear that same name, or did it formerly do business under a different name?

A. It could not do that.

Q. Did it succeed some other Bank?

A. We changed the name from Marsh National Bank to Capital National Bank.

Q. What bank, if any, did the Marsh National Bank succeed?

A. It didn't succeed any. When a man organizes a national bank it doesn't succeed any bank; that doesn't happen in the history of banking as I understand it.

Q. Did it assume the banking business of any other bank?

A. It might have had some of the customers, but had none of their books or stationery, but might have had some of the customers.

Q. And some of the paper?

A. I don't remember about that.

Q. How long did Marsh Brothers Mosher & Company do a banking business in Lincoln?

A. I don't remember, I have forgotten.

Q. About how long?

A. I don't know.

Q. When did they cease doing business with reference to the time the Marsh National Bank was organized?

A. I don't know.

1586 Q. Did not Marsh Brothers Mosher & Company cease doing business as bankers immediately preceding the time the Marsh National Bank was organized and commenced business?

A. That is possible, probably.

Q. You were in the employ of Marsh Brothers Mosher & Company?

A. No sir, I was one of the firm.

Q. What were your duties in connection with the banking firm of Marsh Brothers Mosher & Company?

A. I could not tell you.

Q. Was it a corporation or partnership?

A. Partnership.

Q. Who were the members of the partnership?

A. C. W. Marsh, W. W. Marsh, C. W. Mosher, and R. C. Outcalt.

Q. Who acted as cashier?

A. There was not any.

Q. Who acted as president?

A. There was not any, just the same as any other firm would be. There were no officers in the firm.

Q. Did the firm do a general banking business in Lincoln?

A. Yes sir.

Q. Who accepted deposits and issued certificates for them?

A. Any member of the firm who happened to be at the counter.

Q. What members of the firm resided in Lincoln?

A. C. W. Mosher and R. C. Outcalt.

Q. Where did C. W. and W. W. Marsh reside?

A. I think at Sycamore and Dekalb, Illinois, one at one,

1587 and one at the other, I think.

Q. Neither of them ever lived in Lincoln?

A. Yes, they lived in Lincoln.

Q. When?

A. I don't know the dates.

Q. Did they at the time the firm you speak of was doing a banking business in Lincoln?

A. No.

Q. Then the business of the Bank was conducted by C. W. Mosher and yourself?

A. Yes sir.

Q. How were the drafts issued by the Bank signed?

A. Marsh Brothers Mosher & Company.

Q. How were the certificates of deposit made by the bank signed?

A. Same way.

Q. Who kept the books of the firm?

A. I don't know.

Q. Did you do any of the book work?

A. I think I did perhaps, in that early day. We had several different bookkeepers as the business increased.

Q. About how long did the firm continue to do a banking business?

A. I don't remember.

Q. Can you refresh your recollection by examining into any of the old books and papers?

A. I don't believe I could. I don't know anything about it. That is over twenty years ago.

1588 Q. I hand you ledger of Marsh Brothers Mosher & Company, which has been identified by the Notary as Exhibit "9," and ask if you can tell by it when this bank did business?

A. That says 1882 there. That is all I know about it.

Q. What time in 1882?

A. January, June, and July.

Q. You may state if that is the time the firm commenced doing business?

A. No, they commenced in 1878, October, 1878, I think it was.
Q. And they were doing business during the year 1882?
A. According to that they seemed to be.
Q. Do you know whether that is correct?
A. No, I don't.
Q. Do you mean to say that you don't know whether Marsh Brothers Mosher & Company were here during the year 1882?
A. No, I don't remember the dates.
Q. Can you tell by examining the book?
A. I cannot tell without making a system of these books, going over them, and give you the dates. If it is necessary I will come down tomorrow and do that.
Q. Can you tell from an inspection of the book I hand you?
A. No sir, I can't.
DEWEESE: In order to qualify the witness I ask this question: Is it not true that all you know about the date is what the book shows?
A. Yes.

1589 THOMAS:

Q. Now you may state when the firm of Marsh Brothers Mosher & Company ceased to do business, and when it commenced in the name of the Marsh National Bank?
A. I don't know.
Q. You may state when the firm of Marsh Brothers Mosher & Company ceased doing business as a banking firm?
A. I don't remember.
Q. You may state when the Marsh National Bank commenced doing business?
A. I don't remember the date exactly. I don't believe I could tell within a year.
Q. Can you tell by examining the books of these banks?
A. No sir, not to swear to it.
Q. Is that book I handed you first, identified as Exhibit "9," one of the books of Marsh Brothers Mosher & Company?
A. The title on the book says it was.
Q. I will ask you if you ever saw it before?
A. I don't think I ever did.
Q. Any of your figures or writing in that book?
A. I can't tell.
Q. Will you examine it and see?
A. You want a thorough examination of every page?
Q. No, just see if you can find some of it.
A. Just run it over and see whether it is?
Q. Just see if you find any of yours?
A. I don't see any of it.
Q. Did the firm of Marsh Brothers Mosher & Company keep a ledger?
A. I suppose so.
1590 Q. Do you know whether they did or not?
A. No sir.
Q. Did they keep a journal?

A. I suppose we did, but I don't know whether in that shape.
Q. Did you have any bookkeepers?
A. Yes sir.
Q. When the firm was first organized?
A. Yes, E. W. Mosher kept books, and S. K. Hale, I think he was with Marsh Brothers Mosher & Company, and I think W. A. Sharar. Those three worked there at different times.
Q. You remember the firm did keep a set of books, do you?
A. Yes, I remember that.
Q. What became of those books when the Marsh National Bank was organized?
A. I don't know.
Q. Have you ever seen those books since the Marsh National Bank was organized?
A. Not that I know of. I don't remember.
Q. Don't remember of ever having seen any of the books since the Marsh National Bank was organized, any of the books of Marsh Brothers Mosher & Company?
A. I don't remember of seeing them at any time.
Q. What do you say as to whether Exhibit,—do you know the handwriting of this book, Exhibit "9"?
A. I can only surmise.
Q. Who do you surmise?
A. I think S. K. Hale, no, not that one, I have no idea who wrote that; it may be Sharar.
1591 Q. Can you show some of Hale's handwriting on the book?
A. Yes, that is his, I think it is, on pages 148 and 149.
Q. Containing the account of Donnell, Lawson & Simpson, New York?
A. Yes.
Q. And pages 145, 144, 143, 142, 141, and 140, are those in the same handwriting?
A. They are not in the same handwriting at all.
Q. They are up to page 141?
A. I haven't looked at the pages.
Q. Look at the pages, is page 140 his writing?
A. I don't think it is.
Q. Is 141?
A. I don't think it is.
Q. And 142?
A. I don't think so.
Q. Whose is it?
A. I have no idea unless Sharar. I haven't seen his writing in twenty years.
Q. On page 144?
A. I believe that would be S. K. Hale's, but am not sure.
Q. 145 would be Hale's?
A. I think so.
Q. The same as to 146?
A. Yes.

Q. And 147?
A. It looks like it.
Q. 148 and 149 you have testified to?
A. Yes, it looks like his.
1592 Q. I hand you Exhibit "10," indicated as Ledger One of the Marsh National Bank, and ask you if you know what book that is?
A. No sir, I don't.
Q. You may examine it and see if you recognize it, calling your attention to page 617, Collection account Marsh Brothers Mosher & Company?
A. That is the ledger.
Q. Of the Marsh National Bank?
A. Nothing to show but the title of the book.
Q. Did you state a moment ago that the Marsh National Bank commenced doing business about June 1st, 1883?
A. No sir, I stated that it would be guess work to say.
Q. I now hand you now Exhibit "26," and ask you if you recognize the handwriting on that book?
A. No sir, I don't.
Q. I ask you if you recognize the handwriting or signature, "R. C. Outcalt, Secy," on page 37?
A. I recognize the signature.
Q. Whose signature is it?
A. Mine.
Q. I will ask you if that book contains the minutes of the meetings of the directors and stockholders?
A. It says so, but I would have to examine it to see.
Q. You may examine it and tell?
A. To answer that question I would have to go over it.
Q. Go over it?
A. It would take me an hour.
Q. Take your time? You may state what that book contains?
1593 A. I don't know.
Q. Have you read it?
A. No sir.
Q. Will you please read it and see?
A. I can't tell if I do.
Q. You can't tell what it contains after reading it?
A. No sir.
Q. It is written in English?
A. Yes.
Q. The writing is plain?
A. Yes, but you are asking me something I don't know how to do. I don't know whether these is minutes of all the meetings, or of particular meetings.
Q. Does it contain the minutes of any of the meetings?
A. It is headed that way, yes sir.
Q. Does it contain the minutes of any of the meetings?
A. I don't know.

Q. You may examine the book and see.
A. Yes sir, there is minutes of stockholders' meeting here.
Q. Of what date?
A. 25th day of June, 1883.
Q. Any minutes prior to that time of any meeting?
A. Are the by-laws part of the minutes?
Q. You have been in the banking business from 1870 to 1893, and you mean to say you do not know the difference between by-laws and minutes of meetings?
A. Yes I know the difference, but I didn't know but what you wanted that stated.
1594 Q. You may state what is contained in this book commencing on page 11, and extending from there and including pages 12, 13, 14, 15, 16, and 17?
A. I don't like to appear contrary about this thing, but I would have to read this over.
Q. Read it over? Do you mean to tell me Mr. Outcalt that you don't know what that contains?
A. Any man can see that; it is the by-laws of the Marsh National Bank.
Q. What is contained on page 18 of that book?
A. Copy of the charter.
Q. Of what bank?
A. Marsh National Bank.
Q. You may state what is contained on page 19, and extending over pages 20, 21, and 22?
A. Articles of association.
Q. Of what bank?
A. Marsh National Bank of Lincoln, Nebraska.
Q. Now you may state what is contained on pages 23 and 24?
A. Organization certificate.
Q. Of what?
A. Marsh National Bank, that is a copy of it.
Q. Does that give the names of the stockholders at the organization, together with the number of shares they each owned?
A. Yes, residence and number of shares.
1595 Q. Now what does page 25 contain?
A. Stockholders' meeting.
Q. Of what bank?
A. Marsh National Bank.
Q. You were present at that time?
A. I don't know. I probably was. It is not signed, but my name is down as having been present.
Q. That meeting was held at what time?
A. Held on the 25th day of June, 1883.
Q. I will ask what page 26 of that record contains?
A. That is a copy of the form of the oath of directors.
Q. Of the Marsh National Bank?
A. Marsh National Bank.
Q. And you may state what is contained on page 27 of that book?
A. That is a copy of the certificate of the officers and directors.

Q. Marsh National Bank?
A. Yes sir.
Q. Page 28 is a continuation of it?
A. Yes sir.
Q. Now you may state what is contained on page 29 of that book?
A. That is a directors' meeting.
Q. Of the Marsh National Bank?
A. Marsh National Bank, Lincoln.
Q. Held at what time?
A. Office of the bank, on the 25th of June, 1883.
Q. You were present at that time?
A. Yes.
1596 Q. Who signed the minutes as president?
A. C. W. Mosher as president, and W. A. Sharar, as secretary.
Q. What appears on page 30 of that book?
A. That is a copy of the names of the reserve agents.
Q. Of the Marsh National Bank?
A. Marsh National Bank.
Q. What appears on page 31?
A. That is a stockholders' meeting.
Q. Of the Marsh National Bank?
A. Marsh National Bank.
Q. Held at what time?
A. Dated January 8, 1884.
Q. Who signed those minutes as president?
A. C. W. Mosher, president.
Q. As secretary?
A. W. A. Sharar as secretary.
Q. I will ask you if there is anything else contained on page 31?
A. It says Directors' meeting.
Q. For what date?
A. 8th of January, 1884.
Q. That is of the Marsh National Bank?
A. Yes sir.
Q. And the minutes of that meeting continue on page 32?
A. Yes.
Q. And who signed the minutes of that meeting as president?
A. C. W. Mosher as president.
Q. As secretary?
A. W. A. Sharar as secretary.
1597 Q. Does anything else appear on that page?
A. Directors' meeting, February 14, 1884.
Q. Directors of the Marsh National Bank?
A. Yes sir.
Q. Who signed that as president?
A. C. W. Mosher.
Q. Who as secretary?
A. R. C. Outcalt.
Q. That is yourself?
A. Yes sir.

Q. What appears on page 33 of that book?
A. Directors' meeting.
Q. Of the Marsh National Bank?
A. Yes sir.
Q. Of what date?
A. February 20, 1884.
Q. Who signs that as president?
A. C. W. Mosher.
Q. As secretary?
A. R. C. Outcalt, as secretary.
Q. State what appears on page 34 of that book?
A. That is a copy of the authority to change the name of the bank from the treasury department.
Q. That is the authority issued by the Comptroller of the Currency?
A. Yes sir.
1598 Q. Does that extend to a part of page 35?
A. Yes sir.
Q. And what else is contained on page 35?
A. Stockholders' meeting, May 23rd, no year. Must have been the same year.
Q. Signed by what officers?
A. C. W. Mosher President, and R. C. Outcalt, secretary; that is of the Board of Directors, not of the bank.
Q. What appears on page 36?
A. Special meeting of the directors.
Q. Of the Marsh National Bank?
A. Marsh National Bank, May 5, 1884.
Q. Who signed those minutes?
A. C. W. Mosher, president, and R. C. Outcalt, secretary.
Q. Mr. Mosher was president, and you were secretary of the Board of Directors at that time?
A. Yes sir.
Q. Prior to the time you were Secretary, was W. A. Sharar secretary, and one of the Board of Directors?
A. Not of that bank, yes, he acted as secretary of the meeting.
Q. What else appears on page 36?
1599 A. Special meeting, May 23rd.
Q. That is continued on page 37?
A. Yes sir.
Q. Were the minutes of that meeting signed, and if so, how?
A. C. W. Mosher, president, and R. C. Outcalt secretary.
Q. Those are the meetings of the Marsh National Bank, are they not?
A. Yes sir.
Q. You may state what is contained on page 38 of that record?
A. Copy of receipt for U. S. bonds.
Q. You may state what is contained on page 39 of that book?
A. A copy of the authority to increase the capital stock.
Q. Of what bank?
A. Capital National Bank. That is after it had changed.

Q. The minutes of the meeting on the bottom of page 36 and top of 37 are the last of the Marsh National Bank prior to the time it changed its name to Capital National Bank?

A. It seems so.

Q. What was done at that meeting?

1600 Q. Is that the meeting in which the directors decided to change the name of the bank from Marsh National Bank to Capital National Bank?

A. The records show it is.

Q. You signed the minutes of that meeting?

A. Yes sir.

Q. Were the minutes kept correctly?

A. I suppose, I didn't write them up.

Q. You signed them?

A. Yes.

Q. Did you know that the minutes stated correctly the transactions of the Board?

A. I have forgotten now.

Q. Did you know at the time you signed those as secretary whether those minutes correctly stated the proceedings at that time?

A. I suppose they did. It is too far back for me to remember.

Q. Would you have signed it if it had not?

A. I might have signed it without reading it over.

Q. Do you know as a matter of fact that the bank did change its name about that time, and was thereafter known as the Capital National Bank?

A. Yes.

Q. And you have no reason to doubt that this meeting I have referred to was the one in which it was voted to change the name, and that the minutes correctly state the actions of the Board at that time?

1601 A. No I have no reason to doubt it.

Q. You may state what is contained on page 39?

A. Authority to increase the capital.

Q. Capital stock of what Bank?

A. Capital stock of the Capital National Bank.

Q. At that time did the Bank assume the name of Capital National Bank?

A. So it states here.

Q. Is that the fact?

A. Yes.

Q. What is contained on the upper half of page 40 of this book?

A. Stockholders' meeting.

Q. Of what bank?

A. It don't state the name of the bank here at all.

Q. By whom are the minutes signed?

A. C. W. Mosher, president, and R. C. Outcalt, Secretary.

Q. What else is contained on page 40?

A. Directors' meeting January 1885, the second Tuesday in January.

Q. What bank?

A. Don't state the name of the Bank.
Q. Were Stewart, Holmes, Yates, and Thompson stockholders of the Marsh National Bank?
1602 A. Why, I don't know whether they were or not, unless I could take and look these records over again.
Q. Referring to minutes recorded on page 40, as to whether those are the minutes of the Marsh National Bank or Capital National Bank, you may examine the minutes and names of the directors recited as being present at that time, and state whether that is the minutes of the Capital National Bank or Marsh National Bank?
A. That is the minutes of the Capital National Bank.
Q. Is the same true of both meetings on that page 40?
A. One is stockholders' and one directors'.
Q. Are they both of the Capital National Bank?
A. Yes.
Q. Are they both signed by Mr. Mosher as president, and yourself as secretary?
A. Yes sir.
Q. What is contained on page 41?
A. Directors' meeting.
Q. Of the Capital National Bank?
A. Yes, held on the second Tuesday in July, 1885, and also one held the second Tuesday in January, 1886. That is a stockholders' meeting.
Q. The stockholders' meeting is signed by C. W. Mosher as president and yourself as secretary?
A. Yes sir.
Q. And the other meeting by Mr. Mosher as president?
A. Yes.
1603 Q. What is contained on page 42?
A. Directors' meeting.
Q. What bank?
A. It don't state.
Q. You may state then?
A. It is the Capital National Bank, second Tuesday in January, 1886.
Q. Signed by who?
A. C. W. Mosher president, and R. C. Outcalt secretary.
Q. Is that not signed by your name as cashier?
A. That is a mistake, I had been in the habit of signing that way.
Q. Does that also contain meeting of stockholders?
A. Stockholders' meeting.
Q. Of what date?
A. June 2, 1886.
Q. Signed by who?
A. C. W. Mosher president, and R. C. Outcalt, secretary.
Q. What is contained on page 43?
A. Special meeting of directors.
Q. Of the Capital National Bank?
A. Yes sir.
Q. Held when?

A. June 21, 1886.
Q. Signed by who?
A. C. W. Mosher president, and R. C. Outcalt, secretary.
Q. What is contained on page 44 of that book?
A. Authority to change the bonds, authority from the
1604 treasury department, copy of the authority.
Q. For the Capital National Bank?
A. Yes.
Q. The remainder of that book up to and including pages 67, contain- the minutes of the several meetings of the directors and stockholders of the Capital National Bank, and are each signed by C. W. Mosher as president and yourself as secretary?
A. Yes, except pages 44, 45, and 46.
Q. What do these pages contain?
A. Authority to change bonds.
Q. Page 45?
A. Receipt for U. S. bonds from the treasurer.
Q. And 46?
A. Authority to increase capital, a copy, a record of the authority.
Q. I now hand you Exhibit "107" which is now identified by the Notary, which is pinned to page 69 of this book, and ask you if you can identify that?
A. I can't tell anything about that. I didn't sign it.
Q. Can you read it?
A. Yes, it is signed by C. W. Mosher president.
Q. You may read it over and see what it is?
A. It is a special meeting of the directors to turn that bank over to the Comptroller of the Currency.
Q. What bank, Capital National Bank?
1605 A. Capital National Bank.
Q. What date is that?
A. January 22, 1893; that must have been Sunday.
Q. Now were there any minutes that you know of that were not kept in this book?
A. I don't remember.
Q. These minutes, so far as they go, are correctly stated?
A. So far as I know.

Mr. THOMAS: We now offer in evidence the following pages of Exhibit "26," which has been identified by Mr. Outcalt, namely:— commencing at page 11, and continuing to and including page 67, and intermediate pages.

Mr. THOMAS: We now offer in evidence Exhibit "107," identified by the witness Mr. Outcalt.

Q. Now, Mr. Outcalt we hand you the following books of the Capital National Bank, identified by the Notary as Exhibits 1 to 64 inclusive, and from 94 to 108, inclusive, and ask you to state if those are the books, records, and documents of the Capital National Bank, the Marsh National Bank, and Marsh Brothers, Mosher & Company?
1606–1611 A. Yes, those are the books.
Q. Those are the books in which the business of

those several banks was kept and entered during the existence of the several banks referred to?

A. Yes, those are the same books.

Q. And all of the transactions of these several banks is contained in these various books you have identified?

A. Well, if you have a book missing, the transaction would not be in there.

Q. All you have identified were used by the bank in the regular and ordinary transaction of its business?

A. Yes.

Cross-examination.

Examined by Mr. DEWEESE:

Q. May there have been some transactions by some of the officers of the bank during the period of the existence of the Capital National Bank which does not appear in any of these books?

A. There might have been.

1612 MAY 19, 1902—Two o'clock p. m.

S. K. HALE, of lawful age, being by me first duly examined, cautioned, and solemnly sworn, as hereinafter certified, deposeth and sayeth as follows, viz:—

Q. You may state your name, age, and place of residence?

A. S. K. Hale; I am getting pretty old; I live in the city of Lincoln, and will be 54 years old in November. I live at Number 1519 "O" street, Lincoln, Nebraska.

Q. How long have you resided in Lincoln?

A. Oh, I have been in Lincoln anywhere from 26 to 28 years. I don't remember just when I did come here; twenty-five years anyway.

Q. You may state what in general has been your occupation during your residence in Lincoln?

A. Well, I have been engaged in several different kinds of occupations. When I first came I was with A. D. Marshall & Company. They were in the coal and wood business and handled some grain. I kept their books one winter. Afterwards I took the business of F. H. Halsey of Atchison, Kansas, and I took care of his business there for six or eight months. He was in the same business, but handled grain largely. And from there I was connected with T. W. Lowrey, I think those are the initials, Tom Lowrey. I kept his books about six months, I think it was. Then, the next place I went was to what they called the collection office of the Marsh Harvester people down here, (indicating) and it
1613 eventually drifted into the Capital National Bank; that is where it started; that was the foundation of it.

Q. About when was it that you entered the employ of the Marsh Harvester Company. I believe you stated that was the name?

A. I don't exactly remember how long I was there, but I should

say that it was anyway ten or 12 years; I think the bank failed in 1892.

Q. 1893.

A. 1893, well, you might say twelve years, I guess. I know I was there that long.

Q. What was the name of the firm in whose employ you first entered?

A. Marsh Brothers, Mosher & Company, if I remember correctly, was the name when I first went with them.

Q. And in what business were they engaged?

A. Well, they were engaged in the Banking business to some extent, and largely collections. The heavy part of the business was collections for the Marsh Harvester Company, which was running all over this country at that time. Of course when I went with them, they had simply only started, and their banking business was somewhat light outside of the collections.

Q. How long did this firm of Marsh Brothers, Mosher & Company continue to exist under that name?

A. That I am unable to tell you. Let me think a minute. I won't be positive, but it does occur to me that there were two changes in the name of the bank before it eventually became the Capital National Bank, and the other one,—it has slipped my memory. I don't remember the style of the firm now.

1614 Q. To refresh your recollection, I ask you if it was the Marsh National Bank?

A. Yes. First Marsh Brothers, Mosher & Company,——

Q. How long did it continue to operate under that name?

A. Well, according to this book, it would be June, 30th, 1883.

Q. What book is that you refer to?

A. This is general Ledger No. 1, Marsh Brothers, Mosher & Company.

Q. And identified by the reporter as Exhibit "9"?

A. Yes sir, that is what he says there.

Q. In what name did it operate after that?

A. After that, the Marsh National Bank.

Q. When did it commence to go under that name?

A. It starts here according to dates, July 2, 1883.

Q. Now, when the business changed from Marsh Brothers, Mosher & Company to the Marsh National Bank, you may state if a new set of books was opened?

A. Yes sir, it seems to be a new book here.

Q. I will ask you if Exhibit Number "10," being Ledger Number 1 of the Marsh National Bank is the new ledger that was opened up at that time?

A. Yes sir.

Q. Are both the ledgers of Marsh Brothres, Mosher & Company, and the Marsh National Bank, to which I have referred, in your handwriting, and were they written by you?

A. Part of this I know, these are my figures here, (indicating).

1615 DEWEESE: In what book is that?

A. In the ledger of Marsh Brothers, Mosher & Company.

THOMAS:

Q. I will ask you to state Mr. Hale where the balances that appear in red ink at the commencement of each new account in the Marsh National Bank ledger were taken from, if anywhere, if you know?

A. The balance there is Donnell, Lawson, & Simpson, of New York. It was taken from General Ledger Marsh Brothers, Mosher & Company Number 1,

Q. And transferred to what book?

A. Transferred to Ledger 1, Marsh National Bank, on page 147,

Q. Now you may state what the figures in red ink on the first line from the top on page 147 of the Marsh National Bank Ledger, "149," refer to?

A. They refer to the page where this balance was taken.

Q. They refer to the page of Marsh Brothers, Mosher & Company's Ledger, from which it was transferred to the ledger of the Marsh National Bank?

A. Yes sir.

Q. And referring to the ledger of Marsh Brothers, Mosher & Company, on page 149, on the last line but one of that page, where the following appears:—"Balance, 147, 7301.32," you may state what the figures 147 referred to?

A. They refer to the page on the Marsh National Bank Ledger Number One.

Q. Do you find other accounts that have been transferred from the Marsh Brothers Mosher & Company Ledger to the Marsh National Bank Ledger?

1616 A. Yes sir, I have before me the Commercial National Bank of Chicago, which is transferred in the same way as the other.

Q. Do you find any other accounts that were transferred in this same manner?

A. Yes sir.

Q. You may examine the two books, and state, if you can, whether accounts generally were transferred from Marsh Brothers Mosher & Company Ledger to the Ledger of the Marsh National Bank?

A. Yes, those that I have examined here have been transferred from Marsh Brothers Mosher & Company to the Marsh National Bank.

Q. The transfers are in your handwriting?

A. Yes sir, those that I have examined so far.

Q. Are these ledgers some of the books that were kept by you while you were in the employ of Marsh Brothers Mosher & Company and the Marsh National Bank?

A. They are.

Q. You may state whether these transfers were made at or about the time the Marsh Brothers Mosher & Company formally became the Marsh National Bank?

A. Yes, I should say they were.

Q. Now you may state if the assets, liabilities, and accounts of Marsh Brothers Mosher & Company were transferred to the books of the Marsh National Bank, and became the assets and liabilities of the Marsh National Bank?

1617 A. They were.

Q. I now call your attention to the account indicated as Stock & Bond Account, found on page 7 of Exhibit "10," being Ledger 1 of the Marsh National Bank, and ask you if you made the transfer of this account to this book from Ledger 1, Marsh Brothers, Mosher & Company, page 639, being Exhibit "9"?

A. That is my writing, yes sir.

Q. Did you make the transfer from the one book to the other indicated?

A. I evidently did. Those are my figures.

Q. Is the balance on the first line of page 7, Ledger 1, Marsh National Bank, which reads as follows:—"July 2, Balance, 540," in the same condition as when you originally made it?

A. No sir, it certainly is not.

Q. You may state what, if anything, has occurred?

A. Why, there seems to be $30,000 off of it.

Q. You may state how that was taken off?

A. That I can't do.

Q. I will ask you to state in what physical manner it was taken off?

A. It has been done by an eraser, you know, scratched off.

Q. You may examine the account in the same Ledger 1 of the Marsh National Bank, known as Bills Receivable, and found on page 15, and state if there has been any change in the balance brought forward on the top of that page since you made it?

1618 A. Yes sir, there has been a change made.

Q. You may indicate or state what change has been made?

A. There has been an addition there of $30,000.

Q. You may state how that change was made?

A. The change has been made by erasing the figure 4, and inserting the figure 7.

Q. Was that change made by you, Mr. Hale?

A. Well, that is something I could not be absolutely positive of.

Q. I hand you Exhibit Number "1," being Journal of the Marsh National Bank, and ask you to examine this book and state if you find in it any entry, the effect of which would be to eliminate or take from the Stock & Bond Account the sum of $30,000 just referred to?

A. Stock & Bond account does not appear here on this date anywhere, I see nothing.

Q. I will ask you to state from where, if anywhere, the items that appear on this book known as Ledger 1 of the Marsh National Bank are taken?

A. This is posted from the Journal onto the Ledger.

Q. Are all the entries that appear on the ledger copied from entries that are made on the journal?

A. Yes sir, all that are in my writing are.

Q. State if any entries can properly be made on the ledger
1619 that are not taken from the corresponding journal on that date?

A. No sir.

Q. Then you may state if the account of Stock & Bonds, or any other accounts, could be increased or diminished unless there was an entry to that effect in the journal; by that I mean properly increased or diminished?

A. Well, no, I would say not, properly.

Q. During the time that you were keeping these books, you may state if you made any entries on the ledger, or made any changes in the figures on the ledger that were not justified or indicated by corresponding entries on the journal?

A. No sir, not to my knowledge.

Q. Do you find anything upon the journal shown you that would justfy the change of the balance of the Bills Receivable account; taken from the Ledger of Marsh Brothers Mosher & Company at $248,029.33, and transferred to the Marsh National Bank at $278,-029.33?

1620 A. I do not.

Q. Now, I will ask you whether or not you made the change in Bills Receivable Account by which this was increased the sum of $30,000 in transferring it from the Ledger of Marsh Brothers Mosher & Company to the Ledger of the Marsh National Bank?

A. No sir, I don't think I did.

Q. I hand you now, Mr. Hale, Exhibit "18," and ask you to state if that is one of the books of the Bank kept by you while you were in its employ?

A. Yes sir, it is.

Q. What is that book known as?

A. That is known as a daily balance book, of the Marsh National Bank it says here; the cover is off.

Q. You may state if you were in the employ of the Marsh National Bank during the entire time it existed and did Business in that name?

A. Of the Marsh National Bank?

Q. Yes.

A. Yes sir.

Q. You may state if you were in the employ of the Capital National Bank during all of the time of its existence?

A. I was.

Q. Were you in its employ at the date of its failure?

A. I was.

Q. State generally what books you kept during the time you were in the empoy of these three banking firms, or corporations?

A. I kept what was termed the general books of the bank; this daily balance book, cash journal, ledger, and balance book.

1621 Q. Are these the books you have referred to and examined during your examination?

A. Those are part of them.

Q. Is the book, Exhibit "18," I hand you one of the books of the bank which you kept?

A. Yes sir.

Q. I will ask you to examine this book, commencing on page under date July 2, 1883, and state if you find any changes or alterations in any of the figures since the entries therein were made by you?

A. I do.

Q. You may note some of those changes?

A. There is this here in stock and bond account.

Q. Under what date?

A. July 2, 1883.

Q. What is the nature of the change?

A. There seems to be a change of $30,000, taken from stock and bond account and added to Bills Receivable account.

Q. In what manner was that change effected?

A. Simply taken from one account and added to the other.

Q. Do you mean erased or scratched out?

A. Yes, erased from the stock and bond account, and the original figures in Bills Receivable erased and $30,000 added to it.

1622 Q. Thereby increasing the Bills Receivable $30,000?

A. Yes sir.

Q. The Bills Receivable account on that date is indicated in what manner?

A. "B-R."

Q. You may follow these two accounts, stock and bond account, and bills receivable account, and note during how many days these changes occur?

A. From July 2, 1883, to July 27, 1883.

Q. Inclusive?

A. Inclusive, yes sir.

Q. Now I will ask you to examine the account of Bills Receivable on this same book, and state during how many days these changes are made in that account?

A. Twenty-two days, if I count correctly, and I guess I do. I can give it in another way, from July 2, 1883, to July 27, 1883, inclusive.

* * * * * * *

1623 Q. Did the Bank keep a separate book, in which it entered items of interest paid by the Bank?

A. Yes sir.

Q. What kind of a book was that?

* * * * * * *

1624 Q. Was this interest paid book similiar to the book Exhibit "32," which I hand you?

1625 A. Yes, similiar to this, possibly just like it, as I remember now.

* * * * * * *

Q. Would the interest paid book properly contain any entries excepting those that you have indicated, namely for disbursements on account of interest or exchange?

A. Yes, it would contain those entries.

1626–1646 Q. Would it properly contain other entries than those specified?

A. Why, I hardly think so. If I had the book before me I could very soon tell.

Q. Could any other entries be made on that book than for interest paid for the bank, regularly, and properly?

A. Why, I don't think any entry could be properly made only for an expenditure of the bank in some way, you know, either interest paid on deposits, or something like that.

Q. And would those entries be debit or credit entries?

A. They would be debit.

Q. These would all be debit entries?

A. Yes sir.

Q. Could a credit entry be properly made to this account, or on this book?

A. They could not.

* * * * * * *

1647–1761 Q. Now, Mr. Hale, I hand you a bunch of certificates purporting to be certificates of deposit of the Capital National Bank, being 777 in number, and which the notary identifies as Exhibits 147 to 923½, inclusive, and ask you to examine them, and state if you recognize the handwriting on each of those certificates?

A. I do, yes sir.

Q. You say you recognize the handwriting on each of those certificates?

A. I do.

Q. You may state if those are certificates that were issued by the Capital National Bank?

A. They are, yes sir.

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Endorsed on cover: File Nos. 20,139; 20,140; 20,141; 20,142. Term Nos. 230, 231, 232, and 233. Charles E. Yates *et al.*, plaintiffs in error, *vs.* Jones National Bank. Charles E. Yates *et al.*, plaintiffs in error, *vs.* Utica Bank. Charles E. Yates *et al.*, plaintiffs in error, *vs.* Thomas Bailey. Charles E. Yates *et al.*, plaintiffs in error, *vs.* Bank of Staplehurst. Bill of Exceptions. Filed March 20th, 1906. File Nos. 20,139, &c.